



Rose and Move digital artwork on 300 gsm photographic paper -2008 by Artist Fern Smith

## PROTECTING WOMEN'S RIGHTS

Who are the women who have championed for women's rights in Victoria? I search high and low for information from se-  
libraries and anecdotal evidence. Joan Marys Rosanove (Lazarus) (1896-1974) was instrumental on the right to practice  
in changing divorce law. To be a [female] lawyer you must have the stamina of an ox and a hide like a rhinoceros. And a  
teeth-you must look as if you hadn't noticed". J.M. Rosanove QC Her father gave Joan her first brief in 1919 and 1970 she be-





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### Disclaimer

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## The Objectives of the Association:

- (a) to provide a common meeting ground for women lawyers;
- (b) to foster the continuing education and development of women lawyers in all matters of legal interest;
- (c) to encourage and provide for the entry of women into the legal profession and their advancement within the legal profession;
- (d) to work towards the reform of the law;
- (e) to participate as a body in matters of interest to the legal profession;
- (f) to promote the understanding and support of women's legal and human rights; and
- (g) such other objectives as the Association may in General Meeting decide.

## Further, the Association also adopts the objectives of the Australian Women Lawyers and is a Recognised Organisation of that Association:

- (a) achieve justice and equality for all women;
- (b) further understanding of and support for the legal rights of all women;
- (c) identify, highlight and eradicate discrimination against women in law and in the legal system;
- (d) advance equality for women in the legal profession;
- (e) create and enhance awareness of women's contribution to the practise and development of the law; and
- (f) provide a professional and social network for women lawyers.

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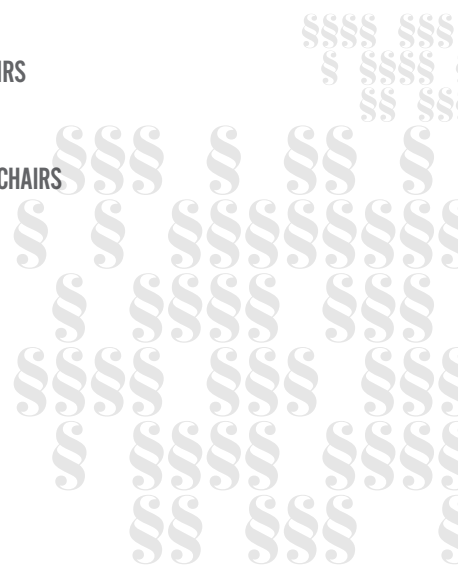
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This is the first edition of Portia as an annual publication. Welcome! We wanted to produce a publication which encapsulated VWL's year in 2008 as well as provide a canvas for critical thinking, debate and reflection on the topic 'Protecting Women's Rights'. We hope you enjoy reading it over a coffee, on the air walker, in the park over lunch or on the train.

Portia really does my job for me for the purposes of this forward. It details in words, photos and art work what our main objectives, causes and events have been throughout 2008. If you would like a detailed account of our year, log on to the VWL website at [www.vwl.asn.au](http://www.vwl.asn.au) and read all the reports prepared by our committee heads for the AGM.

At the Executive's planning day back in January we resolved that 2008 would be a year focused on our members. This focus has led to a big agenda of events from all committees, a keen following and voicing on important issues such as abortion, indigenous rights, accession to the CEDAW protocol, reform to the Sex Discrimination Act and a continuation of our commitment to mentoring and protocols on flexible work practices. I thank my Executive in 2008 for their unfathomable endurance, talent and dedication to the advancement of women in the profession.

VWL protects women's rights everyday by its very existence. We are the leading women lawyers group in the country – an achievement we never take for granted and which you, as a member, supporter and friend of VWL should be proud of. This is your organization. You drive our projects by the issues that you identify as barricading women's pathways to the higher echelons of the profession, to a balanced family and work environment and to an advanced and forward thinking profession.

It has been an honour to head a body full of passionate members. I look forward to seeing you all again in 2009.

**CHRISTINE MELIS**  
**Convenor**  
**Victorian Women Lawyers**

**'Gender equality in 2008: What matters to Australian women and men'**

My Listening Tour was about finding out where we are at in our pursuit of gender equality and where we should focus our efforts in the future. I travelled to every state and territory and I personally met over 1000 Australians from all walks of life. Many more had their say on our blog, and many thousands more followed our journey on the internet.

I can report – without reservation – that in 2008, gender inequality remains an everyday lived experience for women and men in Australia. Moreover, people told me loud and clear – gender equality matters.

Following the Listening Tour, I will focus on five key areas that I have identified as important to achieving gender equality.

***Achieving greater balance between paid work and family responsibilities for men and women***

Across Australia, women and men shared with me the daily grind of balancing work and family. Women continue to do the double shift of paid and unpaid work, while workplace cultures often mean that men can't access flexible work arrangements, even when they are available. From corporate boardrooms to factories, fathers are feeling the pressure of being the primary breadwinner – and many told me they want to do it differently.

Many businesses are introducing innovative strategies to make family friendly and flexible work more than just empty slogans. Leadership is also needed at the highest levels to drive deep cultural change to make flexible work the norm, not the exception.

No longer can our workplaces only afford to value what is known as the ideal worker – who is male, without visible caring responsibilities and able to exceed full time work hours. This model has never worked well for women and increasingly not for men either.

The need for legislated paid leave for parents is supported widely – as far as many are concerned, it is a national embarrassment that Australia lags so far behind our international counterparts. There is no question that paid maternity leave is a basic human right.

I will continue to advocate for a government funded paid leave scheme for parents that is world class – one that delivers for families, employers and government.

***Increasing the number of women in leadership positions, including supporting Indigenous women's leadership***

Women's voices continue to be under represented in leadership and decision making roles across the community, government and business. Increasing women's representation at the most senior levels is a top priority for achieving gender equality.

While we often hear of the absence of women on boards, it is equally important that we support and resource the efforts of the many women who are working at the grassroots to improve the lives of their communities – women found everywhere across our nation.

During my Tour, I met Aboriginal and Torres Strait Islander women who are driving immense social change within their communities – often in the face of extremely limited resources. They are leading efforts to make their communities safer, healthier and stronger. These women must be supported as leaders in Australia – regionally and on the international stage. There much to be learned and shared with women across the world.

I am eager to build bridges between the corporate world and Indigenous Australians, particularly through fostering relationships between women leaders in these two spheres of Australian life.

***Driving down the incidence of sexual harassment***

It is clear from my Listening Tour that there is a need to put sexual harassment back on the radar. Sexual harassment remains embedded in workplaces across Australia. Many women fear repercussions if they complain, describing it as 'career death'. Often, employers were reluctant to talk about sexual harassment, and those who did told us they were often unclear about the best way to respond. Sexual harassment comes at a high cost – both to individuals and business. We can no longer afford that cost.

I have commissioned a national survey to track trends in the nature and extent of sexual harassment in Australia. I will use this research to develop an education strategy, aimed at employees and employers, to reduce the incidence and impact of sexual harassment. It is my goal that in five years time, every employee in Australia will know their rights about sexual harassment and feel confident to make a complaint. I want to see that every employer – small or large - understands their responsibilities and is taking active steps to prevent and eradicate sexual harassment.

## MESSAGE FROM OUR PATRON MARILYN WARREN, CHIEF JUSTICE

### ***Reducing the gender gap in retirement savings***

Half of all women aged 45-59 have \$8000 or less in retirement savings - compared to \$31,000 for men. This is an injustice which, if left unaddressed, will only grow as a major social and economic problem.

On my Listening Tour, many older women shared their anxieties about living in poverty in their later years struggling to make ends meet, often after a life spent caring for others. Unless action is taken, many more will share this same fate.

Addressing women's low levels of superannuation and retirement savings includes looking at innovative ways to recognise and value unpaid work, the large majority of which is done by women.

This is a very complex area of public policy. I will be working with a range of experts – academic, government, policy, finance and superannuation – to investigate these factors. People who spend a lifetime providing care deserve better than poverty in their old age.

### ***Strengthening laws to address sex discrimination and promote gender equality***

Strong legal protection from sex discrimination and sexual harassment is at the foundation of gender equality. In 2008, it is time to look at ways to improve protection afforded by law.

The Senate Legal and Constitutional Affairs Committee is currently undertaking a review of the Sex Discrimination Act 1984 (Cth). This is an historic opportunity for us to evaluate whether the legislation has effectively delivered on its objectives.

It is clear that protection from discrimination on the grounds of family responsibilities needs to be broadened. Currently, it only covers individuals if they are sacked because of family responsibilities, and provides even less coverage for men. We need to secure a first-rate system of legal protection from sex discrimination and sexual harassment for Australia.

The pursuit of gender equality in Australia is a shared vision. Governments, women's organisations, community groups, researchers, business, unions, and many others each play a crucial role. I look forward to working in collaboration with all those to make this vision a reality.

*This is an extract from a speech given by Federal Sex Discrimination Commissioner Elizabeth Broderick on 22 July 2008, as she launched the report from her Listening Tour of Australia. A full transcript of the speech and report are available at [www.humanrights.gov.au](http://www.humanrights.gov.au).*



*"We celebrate the anniversary of the great achievements of the Suffragettes."*

While New Zealand and Australia were ahead of the world in giving women the vote, the obstruction and barriers encountered by the Suffragettes makes their achievements so very powerful.

They were women who provided generational inspiration. These women, determined in their cause, empowered a generation of women to demand equality. They gave women a voice, one which had until then been quashed by prejudice. In their own way, Emmeline Pankhurst and those she energised, continue to provide modern women with the inspiration to pursue equality. As women, we need to remain constantly vigilant about the denial of human rights against women. Now, as educated women, we must continue to promote equality in remembrance of the work of these pioneering women. As lawyers, we are privileged and it is therefore our responsibility to ensure this goal is achieved. Our careers in the law provide us with a magnificent opportunity to help others – through supporting important organisations such as the Victorian Women Lawyers, pro bono work and, by supporting women in our own personal work place.

Many of these issues are explored in this edition. It provides a timely reminder for all of us that through empowerment comes true equality.

Yours sincerely  
**MARILYN WARREN**  
Chief Justice



## ABOUT VICTORIAN WOMEN LAWYERS

### CHRISTINE MELIS, CONVENOR

The legal profession is facing more issues than ever before. At a time when 70 per cent of law graduates are female yet only 20 per cent are female partners, firms are forced to tackle retention rates in more efficient and innovative ways. There is still much to be done to advance women in the legal profession and Victorian Women Lawyers (VWL) continues to promote the interests of women in all areas of law.

VWL is a not-for-profit membership based organisation comprising primarily women solicitors within Victoria. Its objectives include promoting law reform and understanding and supporting women's legal and human rights. It also operates as a network for information exchange, social interaction and continuing education and reform within the legal profession by various means, including commissioning and publishing reports that attempt to identify and explore issues faced by women lawyers. VWL is sponsored by the Law Institute of Victoria (LIV) and Melbourne law firms.

VWL's objectives are achieved through various committees with a focus on three key areas – professional development; networking and collaboration with other professional bodies; and raising awareness on human rights issues. Examples of some of our key initiatives in 2008 are:

- Creating the Migrant Resources sub committee which seeks to disseminate information to newly arrived migrant women and children on their legal rights;
- The annual VWL/LIV Dame Roma Mitchell Memorial Lunch in commemoration of International Women's Day. This year we addressed the federal government intervention in the Northern Territory with guest speaker, Olga Havnen, Head of Indigenous Strategy Development;
- In a 'one of its kind forum', heads of transactional groups and senior managers with experience managing lawyers with flexible work arrangements met for a candid discussion about the forces at play when addressing flexible work arrangements. The forum specifically targeted findings made in VWL's ground breaking '360 degree review: flexible work practices – confronting myths and realities in the legal profession';
- Representation at the CEDAW Roundtables in Canberra on Migrant and Refugee Women's rights and Aboriginal and Torres Strait Islander women;
- An inspiring event in collaboration with the Women Barristers Association (WBA) on 'Coming to the Bar';

- A panel presentation for Law Week with Judge Felicity Hampel, Legal Services Commissioner, Victoria Marles and Office of Public Prosecutions principal solicitor, Vicky Prapas who spoke about their respective legal careers and journeys;
- A forum on Women in Sport with guest speakers, Dr Nikki Wedgwood, Amelia Burgess and Dr Mel Heenan;
- A finance forum on managing your superannuation;
- A keynote address by Lin Harfield-Dodds of United Care Australia; and
- A joint breakfast event with the LIV with the theme 'Shaping the future of women's rights'.

VWL continues to make its voice heard through government submissions on the law of abortion; accession to the optional protocol on CEDAW; and the inquiry into paid maternity, paternity and parental leave. In an exciting new initiative with WBA, VWL launched a mentoring program on 24 July 2008 between law students and members of the legal profession with her Honour Justice Marcia Neave as our 'champion'.

Member benefits include:

- Access to our electronic newsletter, 'Women Keeping in Touch' which gives members the opportunity to read about current issues and initiatives of VWL as well as to keep abreast of events run by other organizations VWL shares a relationship with including, Australian Corporate Lawyers Association, Women Barristers Association, CPA and the LIV;
- Receipt of our annual journal Portia;
- Members Only access to our website; and
- Free or heavily discounted rates on functions and events.

For more information please email Tracey Spiller at [tspiller@liv.asn.au](mailto:tspiller@liv.asn.au) or see our website to download a membership form – [www.vwl.asn.au](http://www.vwl.asn.au).

"Did you know that it's the centenary of women's suffrage in Victoria in 2008?" Mary Crooks, Executive Director of the Victorian Women's Trust, asked me on my first day volunteering with the organisation in December 2007. Embarrassingly, despite being an Honours student in Gender Studies and History at the University of Melbourne, I had to admit that no, I had no idea! Since then I have certainly learnt a lot more about women's struggle to gain the vote in Victoria. I have assisted the Victorian Women's Trust with the research and promotion of three free public forums being held in celebration of the centenary of women's suffrage, the first two of which were held in March and June. The third is scheduled for November 2008.

### **Ambivalent histories**

What I have learnt through working on these projects has not been an unambiguous tale of triumph and celebration. The Adult Suffrage Act of 1908 did not allow women to stand for election to the Victorian Parliament. It would not be until 1924 that women could stand for Parliament, and a woman was not elected until 1933. Throughout most of the twentieth century the number of female Victorian parliamentarians would remain low, although there has been a significant increase in numbers in recent decades.<sup>1</sup> The Act did not formally disenfranchise indigenous women, but many indigenous Victorians would face disenfranchisement in practice, as well as many other formal and informal legal disadvantages, for many years to come.<sup>2</sup> Many suffrage campaigns were also explicitly racist, cruelly mocking the notion that some indigenous and Chinese men were enfranchised, while white women remained voteless.<sup>3</sup> Furthermore, many suffragists campaigned for the vote on the grounds that women's innate difference to men as the 'fairer sex' enabled them to provide a unique influence over the political process.<sup>4</sup> For instance, Queensland Premier William Kidston remarked in 1908, in support of women's suffrage in Victoria, that women gaining the vote in Queensland had 'soften[ed] the asperities of the conflict' of parliamentary politics.<sup>5</sup> We must acknowledge these uncomfortable and ambivalent facets of history, just as we acknowledge the less-than-perfect state of Australian society today.

### **Suffrage as struggle**

Keeping these qualifications in mind, there are many valuable lessons to be learnt from engaging in women's political history. Many of the legal rights and freedoms we have today are of course thanks in no small part to the suffragists and other activists who followed in their footsteps. Dominant historical narratives present Australia as an early pioneer on the global stage in granting female suffrage well before many other nations.<sup>6</sup> Assuming Australia to be unproblematically progressive and gender egalitarian, however, masks the long

struggle for, and fierce opposition to, women's suffrage in this country. Women's struggle for the franchise in Victoria, which was the last state to grant women the vote, poignantly captures this. While every other state in Australia, as well as the Federal Parliament, granted women the vote by 1905,<sup>7</sup> eighteen women's suffrage bills failed to be passed into law in the Victorian Parliament over a period of two decades until the Adult Suffrage Act finally passed in 1908.<sup>8</sup> Despite receiving the vote last, Victorian women were the first Australians to establish a formal women's suffrage campaign, when the Victorian Women's Suffrage Society held its first meeting at the Bourke Street Coffee Palace in Melbourne on 24 June 1884. Prior to this, Victorian Henrietta Dugdale is alleged to have been the first individual Australian woman to publicly campaign for women's suffrage, by writing letters to newspaper the Argus in 1869.<sup>9</sup> Australia's first and perhaps only male pro-suffrage organisation, the Men's League for Women's Suffrage, was also based in Victoria.<sup>10</sup>

In September 1891, the 'Monster Petition' for women's suffrage was presented to Premier James Munro, the largest petition ever presented to the Victorian Parliament at the time.<sup>11</sup> An incredible 30,000 signatures were collected from women around the state by several pro-suffrage organisations in a period of just six weeks.<sup>12</sup> The organisers of the Monster Petition faced fierce opposition though, and it would be another seventeen years before Victorian women would have the right to vote in state elections. It is interesting to note that in addition to male pro-suffrage organisations, there were also many female anti-suffragists. In 1900, the Women's Anti-Suffrage League of Victoria was established,<sup>13</sup> and on 16 September 1900, an anti-suffrage petition bearing almost 23,000 signatures was presented to the Victorian Parliament by the League.<sup>14</sup> It has been suggested that some signatures from men and children may have featured on this petition, unlike the Monster Petition, which collected signatures from women only.<sup>15</sup> Thus, the true level of female support for the anti-suffrage campaign was perhaps slightly exaggerated. Nevertheless, it is fair to say there was significantly strong resistance to female suffrage from both men and women in Victoria.

### **The past in the present**

Considering this fierce resistance, it is certainly worth reflecting on the long and passionate campaign waged by the Victorian suffragists. Many suffragists led active lives in the community, in paid and unpaid employment, raising children and running households, as well as campaigning for a breathtaking variety of social justice causes in addition to women's suffrage.



Many campaigns ran concurrent to the suffrage movement, and continued well after the vote was won. The busy life of prominent Victorian suffragist Vida Goldstein exemplifies this multi-fold social justice commitment held by many suffragists. In 1891, at 22 years of age, Vida helped her mother collect signatures for the Monster Petition. She would go on to publish and edit two newspapers, the *Australian Women's Sphere* and later, the *Woman Voter*.<sup>16</sup> She conducted charity work in Melbourne's slums, and became a prominent public speaker both in Australia and abroad. During World War One, she became a fierce peace, labour rights and equal pay campaigner.<sup>18</sup> She also stood for election to Federal Parliament several times, and despite never winning office, garnered an impressive 52,000 votes at the 1903 election.<sup>19</sup> Vida's commitment to social justice was deep but also ambivalent, and we must consider the racist suffrage campaigns she promoted as editor of the *Australian Woman's Sphere* as equally a part of her legacy.<sup>20</sup>

The Women's Christian Temperance Union (WCTU) was also invaluable to the campaign for women's suffrage in Victoria. While they were in some ways very conservative and 'old fashioned' by today's standards, like Vida Goldstein, they were activists for many social justice causes other than suffrage, such as equal pay for women, that remain to be relevant in Australian society today.<sup>21</sup> The road to equal pay for women was of course even longer than the road to female suffrage in Australia, with equal pay not being granted by the Arbitration Commission until the early 1970s.<sup>22</sup> While there is formal equality of pay in Australia today, significant gendered disparities persist in terms of real earnings.<sup>23</sup> Furthermore, the WCTU's lobbying for both women's suffrage and the abolition of alcohol stemmed from a concern about high levels of domestic violence and sexual abuse in the community, which they saw as exacerbated by both gender inequality under the law and alcoholism.<sup>24</sup> Unfortunately, these issues are also still very much alive in Australian society in 2008.

A very different sort of suffragist was Brettana Smyth, a grocery store owner from North Melbourne who also campaigned for women's right to birth control and contraception. At a time when the state, Church and much of the broader community was opposed to birth control, she stocked contraceptives in her store, and gave public lectures on birth control methods.<sup>25</sup> Her radical views brought her into conflict with other suffragists, forcing her to part ways with the Victorian Women's Suffrage Society in 1888 and establish the Australian Women's Suffrage Society. Smyth unfortunately did not live to see the day that women received the right to vote in Victoria, passing away at the young age of 56 in 1898.<sup>26</sup> Given her unwavering

commitment to both reproductive and voting rights for women, it is poignant that abortion has been decriminalised in the state of Victoria in this centenary of women's suffrage year.

### An ambivalent future

Dominant historical narratives present Australia as ahead of its time in granting women the vote, but a careful study of Victoria's experiences reveals suffrage, and indeed many of women's legal rights, were not simply given to women, but were struggled for over many decades, in spite of fierce resistance. This is often lost in the national historical narratives that are taught in high schools and universities, emphasising the need for more local, state-based histories. In addition, the racial and sexual essentialism of some suffrage campaigns is often obscured in more celebratory accounts of women's suffrage. While achieving the vote for women was certainly a remarkable achievement, it was also a partial and in some ways problematic achievement. We need to hold onto this complexity of the past just as we embrace the complexities and uncertainties of contemporary political culture. Legal rights are certainly not inherent or guaranteed; they must be contested, campaigned for, and vigilantly safeguarded. Remembering the achievement of women's suffrage in Victoria as a complex and lengthy struggle, rather than an unproblematic gift, to paraphrase historian Audrey Oldfield,<sup>27</sup> ensures that women's rights under the law are not taken for granted today.

*The Victorian Women's Trust is a philanthropic organisation that conducts research, advocacy and supports projects to advance women in Victoria. The third forum in their series 'Dangerous and Persuasive Women: Celebrating a Century of Women's Suffrage in Victoria' will be held at the BMW Edge Theatre, Federation Square on Saturday 29 November at 2:00pm for a 2:30pm start. Entry is free. To reserve your seat, or find out more information about the Victorian Women's Trust, email [women@vwt.org.au](mailto:women@vwt.org.au) ph (03) 9642 0422 or view their website [www.vwt.org.au](http://www.vwt.org.au).*

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- 3 Kirsten Lees, *Votes for Women: The Australian Story*, St Leonards: Allen & Unwin, 1995, 2.

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- 24 Patricia Grimshaw et al, *Creating a Nation*, 171.
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'Agitate for equality banner' - 2008 by Artist Fern Smith

Carol Stingel won a courageous battle in December 2007 when the Court of Appeal upheld a finding that Geoff Clark had led two pack rapes against her in Warrnambool in 1971.<sup>1</sup> Carol was just 16 at the time of the sexual assaults. The decision was a great victory but due to changes to the law in Victoria Carol's victory won't benefit sexual assault victims.

The wheels of justice turn slowly. Carol had to go all the way to the High Court on a technicality about the time limits in which a civil claim can be started just to win the right to have her day in Court.<sup>2</sup> The High Court decision that allowed her to put her allegations before a jury years after the rapes was a landmark decision. It recognised that psychiatric injury, in Carol's case the Post Traumatic Stress Disorder (PTSD) triggered when she saw Clark on television, can be latent or of delayed onset. It held that psychiatric injury fell under a special provision of Victorian law allowing a claim to be commenced once certain relevant facts, such as the presence of an illness, were known.

The provision in question is section 5(1A) of the Limitation of Actions Act 1958 (Vic). Historically it has been critically important in civil litigation on behalf of those who have endured rape and other sexual assault. It allows a person to commence proceedings as of a right within six years of knowing that they have a disease or disorder and that it was caused by the act or omission of a person. In other words, where certain facts are not known, a plaintiff will get their day in court despite that fact that the primary time limit (now 3 years for an adult) may have expired. This is extremely important in sexual assault litigation as there is often an understandable delay in the disclosure of the sexual assault. In addition, a person may not easily identify a latent psychiatric injury caused by the assaults.

In opposition it was argued that Carol should not be able to rely on s 5(1A). The provision, it was said, applied only to work related industrial diseases such as asbestos related illnesses and not to psychiatric injury. The Victorian Court of Appeal agreed and held that Carol could not rely on 5(1A) and that her claim was accordingly statute barred.<sup>3</sup> The initial impetus for the provision was to allow someone who inhaled an asbestos fiber to sue the asbestos manufacturer when he or she became aware, some 30 years later, that they had contracted a fatal disease. Nonetheless, the provision was cast broadly and nothing on its face contracted its application to only certain kinds of claims.

The High Court overturned the Court of Appeal's decision and held that section 5(1A) could indeed apply to psychiatric injury. It makes sense really – if you don't know you are ill or that someone caused it how can you take legal action? Carol was

not diagnosed with a psychiatric condition until 1999 and did not understand that her symptoms were related to the assaults. She always knew the rapes had taken place but did not understand the consequences for her psychiatric health. She had tried to put them out of her mind and tried to put the past behind her.

Not only do the wheels of justice turn slowly, they can be thrown into reverse. The State Government has amended the Limitations Act so that sexual assault litigants can no longer rely on s 5(1A).<sup>4</sup> The path that Carol took to access justice, and that the High Court confirmed was legitimate and valid, has been taken away.

This is a devastating blow for civil claims for compensation in sexual assault matters. There is often considerable delay in sexual assault victims coming forward. Why? Many survivors suffer from PTSD. The symptoms are extremely debilitating and include avoidance of stimuli associated with the event. PTSD can also be latent, lying dormant until triggered, or can be of delayed onset. When you don't know you are ill or alternatively, when you are in the grip of acute psychiatric symptoms, it is difficult to seek legal advice or act upon one's rights.

We must remember, also, that a child is three times more likely to be sexually abused by a trusted adult in a position of authority than by a stranger. Children are helpless against the intimidation or cunning of adults who want to hide their crime.<sup>5</sup> The child is likely to accept whatever meaning is prescribed by the perpetrator. This may be that the abuse is the child's fault, or that it is normal, or special.<sup>7</sup> It may be the result of physical coercion or trickery. A child may be well into adult life before unravelling the meaning of past events.

Any report usually takes place many years after the events in question<sup>8</sup> when the child's intellectual and emotional capacities have developed and the grown child is no longer at risk of further harm by the perpetrator.<sup>9</sup> Sometimes a report takes place when the person becomes aware of other complaints against the same perpetrator, such as a priest. At that point a person may realise that they are not the only victim. Importantly they may also realise for the first time that there is a possibility they will be believed over the priest, headmaster, scout leader or doctor.

The sexual assault of children is astonishingly prevalent. Studies indicate that 28% of Australian women under sixteen and one in eight boys have been sexually assaulted.<sup>10</sup> The restriction of the application of s 5(1A) is substantial erosion of the rights of sexual assault survivors to seek civil compensation



from those who have harmed them.

Why did the state government make it harder for sexual assault victims to pursue civil litigation for damages? This is unclear. It was part of a package of “reforms” to address the so called “insurance indemnity crisis” and to limit the number of personal injury claims. The gains made by Carol will be appreciated by many who suffer delayed onset or latent psychiatric injury, but none of them will be sexual assault survivors. Foremost among those who have and will benefit from the High Court precedent will be the survivors of the Voyager Melbourne naval disaster, many of whom suffer from delayed onset Post Traumatic Stress Disorder. Other beneficiaries will be those who suffer psychiatric injury as a consequence of motor vehicle accidents, workplace accidents and industrial exposures.

The restriction in the application of 5(1A) applies to cases issued on or after 1 October 2003 and thankfully Carol had commenced her epic journey for justice before that fateful date. In limited circumstances there can be an application for an extension of time. This is at the discretion of the Judge who is compelled to consider any prejudice to the Defendant. It is relatively easy for a Defendant to establish prejudice – if any medical records have been lost or a witness cannot be located. An application for an extension of time is a poor substitute for what was previously a right – an important and fundamental right – the unfettered right to access justice.

It is accepted that asbestos related disease has a unique presentation that warrants the application of more flexible limitation periods. We wouldn't let James Hardie escape civil liability on the basis that the limitation period expired before a person knew they had mesothelioma. Even if that person knew they'd worked in an environment where they were exposed to asbestos they can't litigate until they know they are sick. 5(1A) bestows a right to commence proceedings without an application for an extension of time.

In the same way, the unique presentation of psychiatric injuries arising from sexual assault calls for the application of laws of limitation with some flexibility. To do otherwise is to allow the law to shelter sexual offenders from civil liability if they are cunning enough to escape detection until the expiry of the primary limitation period. This flexibility was previously achieved by s 5(1A) of the Limitation of Actions Act but has now been removed for sexual assault litigants.

Carol's faith that the truth would prevail and her extraordinary dignity have made her a beacon for other sexual assault survivors. It's a shame that the government chose to throw technical legal hurdles in the path of those that would follow her into the light.

*Dr Vivian Waller acted for Carol Stingel in her High Court Appeal. Viv established the Sexual Assault Unit at Maurice Blackburn and now runs her own legal practice, Waller Legal, dealing exclusively with child abuse, sexual assault and victims of crime matters. She completed a doctorate at the University of Melbourne on Sexual Assault Litigation. She is a member of the Justice Committee of Victorian Women Lawyers.*

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- 2 Stingel v. Clark [2006] HCA 37
- 3 Clark v. Stingel [2005] VSCA 107
- 4 Limitation of Actions Act 1958 (Vic) 27B; Limitation of Actions Act 1958 (Vic) 5(9).
- 5 David Finkelhor, Sexually Victimized Children (1979); D Finkelhor, “Risk Factors in the Sexual Victimization of Children” (1980) 4 Child Abuse & Neglect 265.
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- 7 Tina Goodman-Brown, et al, ‘Why Children Tell: A Model of Children's Disclosure of Sexual Abuse’ (2003) 27 Child Abuse & Neglect 525, 537.
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- 9 R L Sjoberg and F Lindblad, ‘Delayed Disclosure and Disrupted Communication During Forensic Investigation of Child Sexual Abuse: A Study of 47 Corroborated Cases’ (2002) 91 Acta Paediatr 1391; M L Paine and D J Hansen ‘Factors Influencing Children to Self-Disclose Sexual Abuse’ (2002) Clinical Psychology Review 271; M Mian, et al, ‘Review of 125 Children of 6 Years of Age and Under Who Were Sexually Abused’ (1986) 10 Child Abuse Neglect 223
- 10 R & J Goldman, ‘The Prevalence and Nature of Child Sexual Abuse in Australia’ (1988) 9 Australian Journal of Sex, Marriage and the Family 94.

## SEXUAL ABUSE IN THE CATHOLIC CHURCH - ALTERNATIVE DISPUTE RESOLUTION PROCESS UNFAIR

### DR VIVIAN WALLER

The flood of allegations of sexual abuse against Catholic clergy continue unabated. Police have charged Brian Spillane, a former school captain and school chaplain of St Stanislaus's College in Bathurst with 93 offences. John Gaven, a former dormitory supervisor at the school, has been charged with 28 offences. In the wake of the Pope's visit to Australia we were assured that the Church was handling claims responsibly and with compassion.

"Towards Healing" is the somewhat euphemistically named alternative dispute resolution process created and adopted by the Catholic Church to deal with allegations of physical and sexual assault.

Alternative dispute resolution processes are to be commended when they are an efficient and accessible alternative to litigation. Such processes should be consistent, independent, transparent and fair. Unfortunately, "Towards Healing" falls short on all counts.

The Church often describes "Towards Healing" as a pastoral process and has discouraged complainants from having independent legal advice or representation. Despite its alleged "non legal" nature, church bodies attend settlement discussions represented by lawyers and sometimes their insurer. If a complainant settles his or her claim it will be necessary for a release to be signed.

Individuals are most unlikely to be able to negotiate on a level playing field with a Bishop, the head of a Catholic Order, their insurer and/or their lawyers. Individuals will have little knowledge of how many other complaints arise from the same sexual offender or institution and no knowledge as to the amounts of other payouts. Individuals are likely to lack knowledge as to whether there is any viable common law claim alternative or the likely quantum of damages in the event of a successful claim. In addition, if an individual has had medical treatment related to the abuse there will be a Medicare repayment liability. Settlements may adversely affect social security payments. Despite these issues, Catholic bodies routinely sign sexual assault victims up to releases without the provision of independent legal advice. The Towards Healing protocol does not acknowledge that a complainant may be represented and does not provide any contribution towards legal fees to ensure independent representation. In settling Towards Healing claims the Church authorities routinely deny to allocate any funds for independent legal representation.

The number of complaints received by Towards Healing, the number of settlements and the identification of offenders

against whom a finding has been made is information that has not been released despite requests. Although the Towards Healing Protocol does not identify an upper ceiling as to quantum of awards in practice this is always encountered.

Assessors, facilitators and reviewers are all appointed by the Church, specifically, by the Director of Professional Standards in each state. The role of the assessors is to investigate the allegations. This usually consists of asking the alleged offender if they committed the offence and little more. Broader investigations appear not to be made. Other students at the school or orphanage are rarely approached by the assessors. Father Peter Dwyer, 65, was arrested and charged in early September with four child sex assaults dating back to his tenure at St Stanislaus' College. Two years ago the Catholic Church dismissed sexual harassment complaints against the priest.

In circumstances where there have been convictions against the offender or multiple complaints the Church may agree to skip the assessment phase. If the assessors consider that there is a basis for the allegations then the complaint proceeds to "Facilitation."

At facilitation the complainant will have the opportunity to talk to the current head of the Order, an apology may be offered as may a modest settlement sum. It is routinely only a fraction of what a person may be entitled to by way of common law damages. On the up side, a small offer is often made where there is no viable common law claim, for example, in circumstances where the limitation period has expired.

While the "facilitation" may look like a mediation you would be mistaken in thinking that the umpire is independent. Independent and experienced mediators from the Victorian Bar are only used where the complainant is represented by a lawyer or other advocate who insists upon it. Many unrepresented complainants have been duped into thinking that the facilitator either represents them or is, at least, independent of the Church. These assumptions are fundamentally incorrect.

The process and the quality of the process varies greatly throughout Australia depending, it appears, on the personnel appointed to handle the claim. Some complainants have reported feeling bullied or belittled. If a complainant demonstrates any reluctance to engage in this process or reluctance to accept the sum offered, the Church authorities state they will fight any civil claim most rigorously. Often Church authorities go on to deny that they are a legal entity that exists at law – if they don't exist you can't name them in proceedings. Some complainants have provided written statements to avoid having to recount the distressing experience of but have



'For equality banner' 2008 - by Artist Fern Smith

been forced to retell their history repeatedly. One gentleman provided a written statement as to sexual abuse in Christian Brothers Orphanage but found that all references to the sexual abuse of other children had been removed from the final report. He refused to sign it.

There is little that is transparent, fair or consistent about Towards Healing. The complainant receives no independent advice or representation unless they have the initiative appoint a private lawyer. Many sexual assault survivors engaging in the Towards Healing process would not even realise that they need independent representation and many who have inquired as to legal representation have been told they don't need it. The most dangerous aspect of the Towards Healing Protocol is the illusion of independence and fairness. In reality it is a variable in-house self defensive mechanism in which the complainant is never on a level playing field.

In Victoria, police attend about 30,000 family violence incidents per year. Most incidents are perpetrated by men against women and children. Family violence, therefore, remains a major issue that needs to be on the women's rights agenda.

Sadly the police statistics represent the tip of the iceberg as most family violence is still not reported to police. The Australian Bureau of Statistics has found that around 16% of Australian women have experienced family violence by a current or previous partner since the age of 15.

Women's Legal Service Victoria (WLSV) has been providing free legal advice, information, representation and legal education to women for over 25 years. We focus on issues arising from relationship breakdown and family violence. Our principal areas of work are family violence (primarily intervention orders), family law and victims of crime assistance applications. A significant proportion of our clients have experienced family violence, even where their presenting legal problem does not relate to an intervention order.

This year saw an important milestone in protecting the rights of Victorian women and children who have experienced family violence. The Victorian Government passed the Family Violence Protection Act 2008 to improve the system for family violence intervention orders.

The Act covers violence that occurs within a family or in 'family-like' relationships. It provides for family violence intervention orders, separating them from stalking intervention orders (which are often used in neighbourhood disputes). The Act also provides for police holding powers in family violence situations and a two-year trial of police safety notices in which police officer can apply to a sergeant after hours (rather the court) to place conditions to keep of violent perpetrator to protect a family member.

Unlike the previous Crimes (Family Violence) Act 1987, the new Act has a clear purpose to maximise the safety of children and adults who have experienced family violence, to prevent and reduce family violence to the greatest extent possible and to promote the accountability of perpetrators of violence.

The Act has a preamble which outlines key principles and acknowledges the key features of family violence that are recognised by the Victoria Parliament. While this will only aid interpretation of the Act where the wording is ambiguous it has important symbolic importance. Finally the law is becoming more closely aligned with women and children's experience of family violence, for example, that it involves an imbalance of power between two people and that it is predominantly perpetrated by men against women and children.



Family violence is also defined more broadly to include physical and sexual abuse, emotional and psychological abuse, economic abuse, threatening and coercive behaviour and any behaviour which controls or dominates a person and causes her to feel fear. For the first time, economic abuse will be legally recognised in Victoria as a form of family violence.

The Act will also seek to minimise women and children becoming homeless as a result of family violence. The Act provides that the court must consider excluding the perpetrator of violence from the home and, if the court considers that an exclusion condition is appropriate against an adult respondent, it must be included in the order.

While the new system of family violence intervention orders resembles the old one to some degree, there are a multitude of changes under the new Act that seek to improve the safety of people who have been subjected to family violence.

The Government is working towards commencing the Act before the end of the year. As with any new legislation it will be important to ensure that lawyers and other professionals are trained on the new Act and that there is carefully monitoring of how it operates in practice in the initial period. There are sometimes unintended consequences of new legislation which can be contrary to Parliament's intention.

WLSV is optimistic that the Family Violence Protection Act 2008, combined with police reforms, specialist family violence court models and efforts to build a more integrated response to family violence in Victoria will have the effect of making women and children safer. We look forward to writing an article in next year's *Portia* to report on how the Act has operated in practice.

**Penny Drysdale**  
**Law Reform and Policy Lawyer**  
**Women's Legal Service Victoria**

## **DAME ROMA MITCHELL MEMORIAL ADDRESS – THE NT EMERGENCY INTERVENTION OLGA HAVNEN**

"I would like to acknowledge the Wundejeri people – the traditional owners of this land and to thank the Institute and Women's legal service for the invitation to deliver this memorial address. I also note that Dame Roma's grandfather Samuel James Mitchell was the first Chief Justice in the Northern Territory. As Dame Roma was such a champion of woman's rights I wonder what she might have made of the recent development in the Northern Territory under the Emergency Intervention particularly its impact on Aboriginal women?

The national emergency in the Northern Territory in response to the Anderson/Wild Little Children Are Sacred report on child sex abuse has resulted in the most radical social policy experiment in Australia in the past 40 years. The passage of the 5 bills comprising Northern Territory Emergency Response legislation on Friday 17 August 2007 enshrined many of these measures into Australian law.

There are a number of the key provisions which I believe may contravene the fundamental human rights of Aboriginal people in the Northern Territory, and offend Australia's international human rights obligations.

Of particular concern, from a human rights perspective, is the lack of consultation with the communities concerned, and the haste with which the legislation was prepared, and enacted. A number of the central components of the legislation raise issues in terms of individual civil and political rights, compounded by the racially discriminatory singling out of declared relevant Northern Territory areas for particular treatment – e.g. compulsory acquisition of Aboriginal freehold land without 'just terms' compensation.

The legislation also contains elements which are neither necessary nor justifiable as measures to address the extremely serious problems of child sexual abuse. Clearly the geographic and demographic features of the NT pose particular challenges for governments in terms of service delivery and economies of scale, however it must also be acknowledged that the underlying causes of Aboriginal poverty and disadvantage are both complex and inter-related. I don't have time today to go through in detail all of the 11 measures in the Emergency Intervention so will instead focus on income quarantining because of its intended beneficial impact on women and children.

Income quarantining was deemed to be necessary to ensure that welfare payments were spent on household necessities including food – and to avoid reckless spending on alcohol and gambling. It was also intended to reduce 'humbug', requests or demands from extended family members for cash.

The objective of income quarantining as set out in the legislation is to:

***“promote socially responsible behaviour, particularly in relation to the care and education of children”***

It was to apply to

- **all people living** within ‘prescribed areas’ in the Northern Territory;
- all people in receipt of any Federal government payment or benefit **Social Security benefits and pensions**, ABSTUDY, defence service pensions and defence force income support allowances, income support;
- for 12 months, half of all income-support and family-assistance payments will be income managed - money can be spent only on food, rent and other essential items;
- people subject to income quarantining have **no right to external review or appeal** (Social Security Appeals Tribunal and Administrative Appeals Tribunal)
- **100% cent of advances, lump sums** and baby bonus installments are to be income managed
- **CDEP participants** were to be transferred to Work for the Dole scheme so that income quarantining could be applied.

The first comment I would make about income quarantining is that it expressly contravenes the fundamental principle of ‘inalienability’ of welfare benefits. That is, under the Social Security Act, no one has the right or power to interfere or take anyone’s welfare benefit or pension. Apparently this principle no longer extends to Aboriginal people in the Northern Territory.

There are now 3 different ‘income quarantining’ regimes being introduced across the country – the NT where it was to apply to all people living within prescribed areas, the Queensland / Noel Pearson model – which is to be selectively applied to those families who are deemed by a Families Responsibility Commission to not be doing the right thing... ie kids are neglected, not at school etc, and a similar approach is to be tried in WA where child protection notifications will trigger income management.

### **So how is all this working in reality?**

Income quarantining has now been rolled out to 24 communities and town camps in 2 regional centres (Alice Springs and Katherine). Clearly there are differing views as to its merits, - some people, predominantly women in some Central Australian communities who feel that income quarantining is a good thing, there are many others who believe it is unnecessary and unjust.

Prior to the election, the ALP gave a commitment that CDEP would be retained. A re-vamped CDEP is welcomed because of its valuable role and contribution to communities, however in retaining and re-instating CDEP the all-in, blanket application of income quarantining has been substantially reduced.

The overwhelming majority of the 7,000 or so CDEP participants are men. The consequence being that it is now predominantly women and aged pensioners whose incomes are being micro-managed. We now have Aboriginal men saying income quarantining is a good thing - if it applies to women. Unfortunately the underlying message to Aboriginal men is that their incomes don’t need to be micro-managed and that women are responsible for household expenditure and children’s wellbeing.

Due to the lack of access to banking and financial services in remote communities, many people use Centrepay to manage household finances.

Centrepay is a voluntary arrangement which allows Centrelink to make periodic payments for rent, electricity, phone, personal loans, fines etc on behalf of Centrelink clients. There are approximately 20,000 Centrepay transactions per week in the NT – the vast majority on behalf of Aboriginal clients living in remote communities. Clearly many people were, and are already, doing the right thing – managing their money responsibly, caring for their children and families, paying rent, loans and in some cases, saving money in things like Christmas Club accounts.

Income management policy guidelines prohibits payment of fines and loans from quarantined monies. Payments are supposed to be made from available discretionary funds.

I understand that a more flexible approach to payment of loans and fines may now be being implemented but there are already many people whose financial affairs are worse off for the introduction of income quarantining.

People who previously were managing their financial affairs quite independently are now facing bad credit ratings for up to 5 years and those who have defaulted on their fines are at risk of imprisonment.

Community sector organizations – Salvos, St Vinnies, Centacare, Anglicare are reporting a substantial increase in the number of Aboriginal clients facing increased hardship.

Centrelink issued vouchers/store cards are being traded for alcohol or a less cash amount. Store cards and vouchers are also being used as a cash equivalent for gambling and exchanged for store gift cards which can be used to purchase any goods including alcohol.

Many Aboriginal women have expressed their sense of shame and humiliation in having to use cards and vouchers for household shopping. Many saying how they feel they have become 'second class citizens' with others – government and non-Aboriginal people determining what they can spend and where.

That Centrelink clients are required to provide 100 points of ID in order to access their quarantined funds is also extremely problematic for mainly older people who simply do not have birth certificates, drivers licenses etc and who not literate and do not speak English. Again, there are reports that proof of ID requirements have been modified so that it is easier for people to access their quarantined monies, but not without considerable hardship being experienced by very vulnerable people. Centrelink advertisements in the NT News informing clients that Centrelink offices are now open on Saturdays for the sole purpose of providing store cards and vouchers to clients. There are many people now living on ½ of their previous incomes – incomes which are already below the poverty line! Larrakia Nations is a Darwin-based Aboriginal resource organization which provides a range of services to 'long grassers' or homeless people. They have good data over many years about client numbers, profiles etc and have reported unseasonably high increased demand for services – up to 300% increase for food vouchers and other emergency relief. Other agencies also report an increased influx of women, children and families into towns. We are now facing a situation of 'internally displaced persons' – a situation which has arisen directly in response to the intervention.

The movement of women, children and families is deeply worrying given that many of them are living in extremely difficult circumstances – mainly in the mangroves and camps around the fringes of town. There is a lack of housing and accommodation for visitors to town. People are now more vulnerable and face increased difficulties in accessing basic services such as health care, police protection etc.

Despite people moving into towns and across state borders in an effort to escape the intervention, the reality is that if their place of residence at June of last year was in one of the prescribed communities, then the income measures continue to apply regardless of where they live.

What many people have failed to understand also is that if they have not received or respond to their letters from Centrelink for an interview to establish their income management arrangements, then an automatic 8 week suspension of payments applies.

Given the high level of mobility and movement of people into town and elsewhere it is reasonable to assume that there are many people who are now without any source of income.

To the best of my knowledge, there is simply no available

evidence the income quarantine as is happening in the NT will positively change behavior or improve family wellbeing. If income quarantining was intended to reduce 'humbug' then the intervention has been completely mis-directed. Much of the humbug comes from young men – those aged 15-24, who simply do not have any independent source of income. In some regions NILF rates are as high as 70% or more. These young men are not at school/education, not in training, not registered with Centrelink, not in CDEP. They are disengaged – absolutely and completely, yet there is nothing in any of the measures under the Federal Government intervention which is specifically targeted at this cohort. I cannot think of anywhere else in the country where such high levels of disengagement by young men would not be of high level concern – if only because of the potential social risks and danger associated with such exclusion and alienation.

Suspension of the RDA - it is of considerable concern from a human rights perspective is the cavalier approach taken by the Emergency Response legislation to Australia's international obligations in relation to the prohibition of racial discrimination, and to the provisions of the Racial Discrimination Act of 1975. The legislation may well be constitutionally valid but is clearly discriminatory. This was enacted in the very same year that the country was commemorating the 40th anniversary of the referendum which was intended to guarantee citizenship entitlements to Aboriginal Australians. Yes, we do need change and a better approach.

Regrettably there is little evidence those involved in driving the 'reform agenda' of the Emergency Intervention had any real commitment to delivering positive, sustainable change, much less any interest in an evidence-based approach to the solutions that would fundamentally make a difference to the lives of Aboriginal people.

If Government had been inclined to engage with community organisations we could have advised them of sensible alternatives – we could and would have pointed out to them that addressing social problems such as alcohol abuse, gambling, child neglect cannot and will not be solved by 'top down' punitive approaches, at extraordinary cost - what will the expenditure of \$88m for administration and 300 new Centrelink jobs actually achieve and who will be held accountable?

Instead, these valuable and necessary resources could have gone into expanding the Centrepay regime, financial literacy and budgeting programs, family and children's services, programs to really combat alcohol abuse and more importantly, programs to re-engage our young men – to provide them with a future for not only themselves, but foster pride and responsibility as sons, brothers, uncles, fathers..... \$88m would have gone such a long way indeed."



Victorian Women Lawyers recently offered free membership to Indigenous law students. Taryn Lee, a part time law student at Victoria University and part time Indigenous Education and Complaints Officer at the Victorian Equal Opportunity and Human Rights Commission recently became a member of Victorian Women Lawyers. Taryn is also a member of Tarwirri, the Indigenous Law Students and Lawyers Association of Victoria.

**Profile: Taryn Lee**

"I am a Yawuru woman from Broome, Western Australia. I grew up in a large extended family within a strong Aboriginal community. My family and culture are central to who I am. I attended St Mary's Primary School and Broome High but completed my schooling in Bunbury, Western Australia. I had other concerns in my life and I didn't have the marks to go to university.

I returned to Broome and started my first job at Notre Dame University doing a traineeship in administration.

I moved to Melbourne when I was 21 years old. Since then some of my family have moved to Melbourne, which makes it feel like home.

Since moving to Melbourne I have worked in administration at the National Native Title Tribunal; as an Aboriginal Community Planning Officer at the Department of Human Services in Dandenong; and as a Project Officer at the Office of Women's Policy within the Department of Victorian Communities. During my time at the Office of Women's Policy I had the opportunity to work with the Indigenous Women's Advisory Committee to Mary Delahunty, the former Victorian Women's Affairs Minister.

I first became interested in the law whilst working at the Native Title Tribunal. I was moved by some of the injustices for Aboriginal and Torres Strait people in the Native Title system and wanted to learn more to contribute to justice for Indigenous people. Whilst working at the Native Title Tribunal I was lucky to have been mentored by some great people who have continued to support me including Gaye Sculthorpe, Tribunal Member, and Ian Campbell-Fraser, State Manager. I commenced part-time study of a Bachelor of Laws at Victoria University in 2004 and continued to work full-time until having a baby last year.

My current role at the Victorian Equal Opportunity and Human Rights Commission addresses both legal and social justice issues. I am involved in both community education and advice on discrimination to the Indigenous community. This work complements my law studies and enables me to continue to work with the Indigenous community to help people exercise and be aware of their legal rights.



I am inspired by Dr Larissa Behrendt and Dr Loretta Kelly. They are prominent Indigenous women who are outspoken on Indigenous issues and the law.

I am not sure what I will do after I complete my law studies. I would like to utilise my legal skills to continue to work with Indigenous people in a legal context, especially with Indigenous women. I would like to work within the law to create positive change.

I recently became a member of VWL and discovered the offer of free membership through Tarwirri. I hope that this membership will broaden my networks with women lawyers and law students and I look forward to attending VWL events in the future."

Summary of submission: **28th July 2008**

### **Inquiry into the Effectiveness of the Sex Discrimination Act 1984 (Cth) in Eliminating Discrimination and Promoting Gender Equality**

Sex discrimination has always been a key issue on the agenda of Women Lawyers' Association of New South Wales (WLA NSW) and Australian Women Lawyers (AWL). They have made several submissions over the years on a number of matters regarding the effectiveness of the Sex Discrimination Act 1984 (Cth) (the Act) in eliminating discrimination and promoting gender equality.

WLA NSW and AWL recommend that section 3 of the Act should be amended as follows:

1. To give effect to certain provisions of the Convention Concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers and Family Responsibilities
2. To eliminate discrimination between employees on the ground of responsibilities as a carer

If these recommendations are adopted, WLA NSW and AWL also recommend that section 3(ba) be removed from section 3 in order to encompass the modern context of family responsibilities that are not limited only to family members, but also to aged and disabled individuals.

Furthermore, WLA NSW and AWL recommend that as Australia emphasises the importance of having international obligations regarding human rights fulfilled, it is imperative to promote equality between men and women in the workplace.

The recommendation is to consider adopting conventions that deal with human rights within the objects of the Act such as the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention Concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities.

- **Replacing the term 'family responsibilities' with the term 'responsibilities as a carer'**

WLA NSW and AWL are concerned that the term 'family responsibilities' in the Act does not reflect the growing imposition on employees of responsibilities involving older and disabled individuals. Therefore, their recommendation is to amend section of the Act to replace the word 'family responsibilities' with the term 'responsibilities as a carer'.

If this recommendation is adopted, WLA NSW and AWL additionally recommend that the term 'family responsibilities' be removed from all relevant sections of the Act and replaced with the term 'responsibilities as a carer'.

- **Indirect discrimination: the reasonableness test**

Beth Gaze noted that the test for the scope of indirect discrimination is unclear and sets a much lower standard than the United Kingdom or the United States; the term 'reasonableness' is a means of transmitting traditional views and rejects any change.

This test has been a barrier for men preventing them from accessing the provisions of the Act to access flexible and family work arrangements.

WLA NSW and AWL recommend that this test should be reviewed and reformed, as appropriate, due to the serious restrictions the reasonableness tests poses on family responsibility provisions under the Act.

- **Special measures intended to achieve equality**

Section 7D of the Act provides a person with the capacity to introduce special measures to achieve substantive equality between men and women. However, the section states the word 'may' instead of 'must'. This enables the employer to exercise power over this provision to his/her discretion and impose flexible and family-friendly work arrangements.

WLA NSW and AWL recommend that section 7D(1) of the Act be amended to change the wording and replace 'may' with 'must'. Alternatively, if the recommendation to amend the Act to replace the term 'family responsibilities' with the term 'responsibilities as a carer' are not adopted, then WLA NSW and AWL recommend that section 7D(1) is amended to incorporate any responsibilities as a carer a person may have.

- **Discrimination in employment or in superannuation**

WLA NSW and AWL recommend that sections 14(1) and (2) of the Act be amended to also incorporate that it is unlawful to discriminate against a person on the ground of the person's 'responsibilities as a carer' in the list of matters.

- **Equal employment opportunity plans**

WLA NSW and AWL recommend that the Act is amended to include and expand requirements set out in Part 9A of the Anti Discrimination Act 1977 (NSW) (ADA) that require all public sector organisations in Australia to prepare equal employment opportunity management plans.

- **Equal opportunity workplace programs and reporting requirements**

WLA NSW and AWL recommend the adoption of a model of external reporting similar to that required by section 13 of the Equal Opportunity for Women in the Workplace Agency Act 1999 (Cth) (the EOWWA Act).

The recommendation includes lowering the 100 employee threshold requirement in place before developing and implementing workplace programs.

VWL NSW and AWL also recommend reinstating the function of the Sex Discrimination Commissioner, prior to the amendments implemented in 2000, to reduce the backlog of cases in the Federal Court.

Furthermore, VWL NSW and AWL support seeking alternative methods to resolving issues other than litigation to avoid re-traumatising victims in a court room.

- **Preventing discrimination, including educative means**

WLA NSW and AWL note that the process towards achieving a balance between paid and unpaid work in one area may be positively or adversely affected by other areas. In certain areas attitudes towards men and women differs and attempts to reform must not only focus on legislative change but also changing social policy and cultural change in the workplace.

For this reason, WLA NSW and AWL recommend that the federal government provides subsidies to firms to provide education and training programs to their employees regarding these changes.

A further recommendation was made to provide awards for developing and implementing such initiatives and also suggested that federal and state governments provide funding for the introduction of mentoring and networking programs, particularly for women lawyers, who seek to have a family while continuing their career path.

Summary of submission: **12th August 2008**

### **Recommending the inclusion of Flexible Work Practice obligations and reporting requirements into the Victorian Government's Legal Services Panel Contract**

Victorian Women Lawyers (VWL) recommend the incorporation of flexible work practice obligations into the Victorian Government's Legal Services Panel Contract (the "contract").

In November 2005, VWL published "A 360 Degree Review: Flexible Work Practices, Confronting Myths and Realities in the Legal Profession" where it was found that the barriers to embracing flexible work practices were the attitudes and mindset of leaders.

In the following year, VWL published, along with the Law Institute of Victoria "Bendable or Expendable? Practices and attitudes towards work flexibility in Victoria's biggest legal employers."

This report noted that long hours of work and the lack of work-life balance leads to high rates of depression and high turnover of staff in the legal field. It was also found that the main reason to adopt flexible work practices is family responsibilities and quite often those who adopt them tend to be promoted less frequently.

VWL recommend that to assist this behaviour change in the legal sector, policies and guidelines stating the employer's position in relation to flexible work practices should be outlined, as well as educating employers on the benefits of the flexible work practice.

VWL produced four protocols – job share, part-time work, flexible work hours and working from home and encouraged the Victorian Government to adopt them to promote flexible work practices in Victorian firms.

VWL recommend that the contract's current Equal Opportunity (EO) responsibilities are amended by expanding the reporting requirements under EO, in both Schedule 4 and in the annual letter sent to Panel firms setting out the requested reports.

Furthermore, VWL suggest that point 1.5 in Schedule 4 should be expanded to require the production of certain information establishing the firm's commitment and support of flexible work practices.

In terms of the annual reporting letter, VWL recommend that the EO reports should be expanded in Part 1 to include the protocols produced by VWL.

Summary of Submission: **1st November 2007**

### **The law of abortion**

Victorian Women Lawyers (VWL) acknowledges that abortion is a very sensitive topic in our community today and encourage the Government to amend the current legislation to ensure that safe, reliable and legal abortion services are available to all women on the basis of informed consent.

A recommendation has been made to review the current law regulating criminal prosecution to practitioners undertaking abortion procedures. VWL support the notion that abortion is entirely up to the pregnant woman to decide.

The key policy objectives of abortion addressed in the submission were quite similar to those of Women's Health Victoria:

- Safe legal abortion is essential; and
- Women should be provided with the all the information to be able to reach a well-informed decision.

The submission acknowledges the importance of such a decision and the consequences. It has been noted that Section 9 of the Victorian Human Rights Charter provides that every person has the right to life and the right to not be arbitrarily deprived of life.

However, VWL believe that the foetus is a potential life and should not override considerations of the woman's choice over what to do with her own body. VWL recommend that abortion should not be included in the Crimes Act as it creates an extra



level of guilt and stigma for the woman and puts unnecessary pressure to make a decision.

The policy objectives of the law of abortion have been outlined:

- Access to the full range of reproductive health services regardless of where in the State they live;
- Provide a model that recognises and respects the rights of women to control their reproductive lives;
- Access to accurate and unbiased information; and
- Supportive counselling.

VWL have underlined that the only factor that should be taken into account when deciding if a termination is informed, is the consent of the pregnant woman and nothing else.

The legislation contains different conditions for lawful termination depending on the stage of the pregnancy. VWL believe that this is arbitrary and problematic and the woman should have the right to choose at any time of the pregnancy whether she wants an abortion.

The role of the medical practitioner in deciding whether a termination is lawful and can proceed should not extend beyond meeting the key policy objectives of abortion which are to be simple, affordable, equitable and legal.

VWL believe that counselling should be available to women, where requested, but should not be made compulsory.

VWL recommend that legislation should distinguish between abortion which is performed with the consent of the woman; and the offence of child destruction. Therefore Section 10 of the Crimes Act should be repealed and replaced with provisions which criminalise behaviour such as: negligent destruction of a child during birth; and assault against a pregnant woman with intent to harm or recklessly harm the foetus.

In summary, the VWL recommend:

- Section 65 and 66 of the Victorian Crimes Act be removed;
- Section 10 of the Crimes Act should be replaced to distinguish child destruction from abortion; and
- In deciding whether an action is legal, other considerations should only be taken into account where the woman cannot consent.

## SHAPING THE FUTURE OF WOMEN'S RIGHTS LIV AND VWL BREAKFAST IN SUPPORT OF IWDA AND WHITE RIBBON DAY

There are two organizations doing work in our community and abroad in recognition of women's oppression and violence against women. These organizations are the International Women's Development Agency (IWDA) and The White Ribbon Foundation. Representatives of these two organizations spoke to a breakfast crowd on Friday, 25 July 2008 at the RACV Club in an event jointly hosted by the Law Institute of Victoria and Victorian Women Lawyers. The breakfast marked 100 years of women's suffrage and was attended by 100 members of the community.

Jo Crawford, adviser to IWDA, highlighted the grassroots work being done by IWDA projects in addressing poverty, access to education and violence against women in developing countries, particularly, in South East Asia. Projects include supporting women to develop the knowledge and skills they need to participate in decision-making so that they can help change practice and behaviour in their communities.

Leigh Gassner, former member of Victoria Police, spoke of his involvement in the White Ribbon Day campaign. The campaign culminates in the International Day for the Elimination of Violence Against Women each year on 25 November. The campaign urges men to speak out against violence and to eliminate violence against women by promoting culture-change around the issue. Leigh noted that 80% of cases of violence against women go unreported. Violence against women, he stressed, is a human rights issue.



Despite significant movements towards gender equality over the past century, we still have not achieved the "solution". Even in Australia, with our great wealth and resources, 38% of women over 15 years of age will experience some form of violence or sexual abuse. On the economic front, Australian women still receive 15% less income than men for performing the same kinds of work. In the developing world, the status of women demands our attention even more urgently.

These troubling realities were highlighted by Joanne Crawford, Vice President of the International Women's Development Agency (IWDA) at a breakfast held by the Victorian Women Lawyers on 25 July 2008. Recognising a need for change, Ms Crawford spoke about IWDA's philosophy and vision – *"for a just and sustainable world in which women control their own lives, their human rights are respected, they have an equal voice in partnership with men for the benefit of this and future generations"*.

IWDA was founded in Melbourne in 1985 to address the concern that *"women were virtually invisible as planners and managers of development programs."* Today, the agency supports programs right across the Asia-Pacific region, including programs for sexual health in Papua New Guinea, literacy and numeracy education in East Timor, and small business development in Sri Lanka.

A unique feature of IWDA is that it supports communities from within. Specifically, IWDA provides financial and strategic support to local groups which, for the most part, are operated by women. This enables IWDA to build change from the ground up. *"We work with women to see what can be achieved,"* says the Carole Shaw, Senior Manager Overseas Programs.

In Cambodia, IWDA in partnership with Banteay Srei and Ad Hoc, are developing a landmark community justice program. This program builds upon a traditional justice model, Somroh Somruel, whereby respected community members, such as parents or elders, act as arbitrators to settle disputes. *"The focus of Somroh Somruel is really to reach solutions for the benefit of the whole community, rather than individuals,"* says Ms Shaw.

Specifically, the project is delivering human rights training to Cambodian men in the cities, including Phnom Pen and Siem Reap. Once they have received training, these men then become community educators, travelling to villages where they equip local arbitrators to better deal with issues surrounding gender relations and family violence. In this way, concepts of human rights and equality are woven into the existing social frameworks

*"This project is particularly significant when you think about the context in which it's operating",* explains Ms Shaw. Cambodia is a country that remains scarred by the massacre of 1.7 million people just last century. A 2002 study conducted for the United Nations Educational, Social and Cultural Organisation (UNESCO) further highlights the traditional barriers that women have faced, even before the Khmer Rouge regime. According to the UNESCO report, traditional hierarchies require Cambodian women to be submissive, particularly towards their husbands. *"Under cover of tradition, one accepts her place and condition without ever accepting the system".[2]*

IWDA hopes that, with the assistance of community educators and training, Somroh Somruel will become a vehicle for positively changing the relationships between men and women and, hopefully, reducing the incidence of family violence.

Looking forward, IWDA will help to measure the impact of the project, with a view to potentially expanding it even further. *"There's still so much more work that needs to be done... it might just turn out to be a useful model in other societies, but we don't know yet,"* says Ms Shaw.

On a more personal note, however, Ms Shaw believes that the work has made a significant difference to the communities in which it has been piloted. *"In some of the remote communities, it was amazing to see men and women sitting down and actually interacting, laughing about some of these issues that were not talked about before."*

IWDA's future depends upon private fundraising as well as government support. One of the agency's upcoming fundraisers will see 15 women on a trek through 90 kilometres of the Kokoda track. For more information about IWDA's work or to make a donation, visit the agency's website, [www.iwda.org.au](http://www.iwda.org.au) or Donation hotline 1300 661 812

### Endnotes

[1] UN Millennium Project 2005. Taking Action: Achieving Gender Equality and Empowering Women. Task Force on Education and Gender Equality, p.27

[2] Fabienne Luco, Between a Tiger and a Crocodile, report for the United Nations Educational, Scientific and Cultural Organisation 2002.



"It's an enormous privilege and pleasure to be with you tonight, as we honour the significant achievements of Lesbia Harford.

I'd like to acknowledge the traditional owners of the land that we stand on this evening, the Wurundjeri people. I pay my respects to their elders, past and present, and to their living culture.

Given that this is a gathering of women focused on women's rights, I also want to acknowledge those who paved the way for a room full of professional women like us to gather to reflect on wielding our professional and personal power for the common good. Women like Mary Wollstonecraft, Simone de Beauvoir, Emmeline Pankhurst, Susan Brownmiller, Andrea Dworkin, Susan Faludi, Marilyn French, Germaine Greer, Dale Spender, Margaret Atwood, and Miles Franklin. Illustrious company!

We gather tonight in the light of the insights, passions and achievements of these and other strong women.

But I think that we all ought to be feeling more than a little outraged that the topic "protecting women's rights" is a relevant one in Australia in 2008.

We keep hearing that feminism is over, that all the battles have been won, that we women have achieved equality. And it's true, some giant strides have been taken.

We vote, we work, we run companies, head up political parties, mount expeditions to improbable parts of the world, achieve breakthroughs in science, and significantly shape the arts. But we are still the primary carers for our children (and

increasingly our parents), we are more likely to be in casual or part time than full time work, we are less educated and are still paid less than men. And let's face it, we are usually the glue that holds our household together.

This glue thing is important. I remember not long after becoming ACOSS President, wiping down my kitchen table after midnight having cooked and cleaned up after dinner, cleared emails I couldn't get to in business hours, supervised homework, fed the kids, the dog and the fish, and made the next day's school lunches, all before I sat down to review the papers for an ACOSS Board meeting in Sydney the next day. I live in Canberra. My partner, like me, travels a lot for work and was away so I was holding it together at home. While wiping the table I confess that I did a bit of muttering along the lines of "I bet Julian Disney or Michael Raper were never cleaning up their kitchens after midnight the night before a Board meeting..."

Don't tell me that the personal ain't political. What else is the political but the accumulation of the personal, the social?

Let's step back for a minute and hear from Joyce Stevens, an Australian feminist and activist who wrote these words for the Australian Women's Liberation Broadsheet for International Women's Day 1975. You, like me, may have them up on your fridge.

#### BECAUSE WE'RE WOMEN

*Because women's work is never done and is underpaid or unpaid or boring or repetitious  
and we're the first to get the sack  
and what we look like is more important than what we do  
and if we get raped it's our fault  
and if we get bashed we must have provoked it  
and if we raise our voices we're nagging bitches  
and if we enjoy sex we're nymphos  
and if we don't we're frigid  
and if we love women it's because we can't get a 'real' man  
and if we ask our doctor too many questions we're neurotic  
and/or pushy  
and if we expect community care for children we're selfish  
and if we stand up for our rights we're aggressive and 'unfeminine'  
and if we don't we're typical weak females  
and if we want to get married we're out to trap a man  
and if we don't we're unnatural  
and because we still can't get an adequate safe contraceptive  
but men can walk on the moon  
and if we can't cope or don't want a pregnancy we're made to feel guilty about abortion  
and ..... for lots and lots of other reasons we are part of the women's liberation movement.*

Much of Joyce's statement is as relevant now as it was 33 years ago. There are still troglodyte attitudes out there that need challenging. And in spite of the leaps we've made since the 70s, the reality is that life is still pretty bloody tough for many women, especially those who are disadvantaged.

A life on welfare, despite what conservative commentators would have us believe, is emphatically not a lifestyle choice. Women who are disadvantaged struggle to survive on manifestly inadequate levels of payment, with little or no access to the supports and services that would enable them to scale the barriers they face to belong, contribute to and be valued by the wider community.

The Newstart allowance for a single person with no dependents is only \$219 a week. For a sole parent the rate is \$236 a week. The single pension, and this includes those in receipt of parenting payment, the disability support pension, or a carer payment, is \$274 a week. Rent in most Australian cities sets you back by more than those amounts.

Year 10 is the highest educational achievement for 80% of single parents, the vast majority of whom are women. That's a big skills gap to the current labour market. Combined with the scarcity of childcare, it's not a big surprise that many single mums on welfare cycle in and out of low skill, low paid jobs.

A life on welfare or in insecure low paid employment is a life lived in poverty, often bringing in its wake a sense of low self esteem and a lack of connection to the broader community, because of very limited access to the basic physical and social infrastructure required to participate in what most of us would consider to be 'normal life'. Money is spent on the basics - food, household bills & children's basic needs. Borrowing and indebtedness is common. Poor households experience poor health, have limited education, are unemployed or work in insecure jobs and increasingly live in communities that are themselves characterised by poverty – perpetuating the cycle of exclusion and disadvantage.

Income inequality is growing in Australia. The gap between the haves and the have nots was increasing steadily during the sunny years of economic boom. Who knows how far the gap will yawn now due to the domestic impacts of the current global financial crisis? What we can be fairly sure about is that more Australians are going to be unemployed. The Harmer Pensions Review and the Henry Tax and Transfers Review, reporting respectively in February and December of next year, have a much harder task in our new global environment as they consider the adequacy, equity, and simplicity of our tax and transfers systems.

I travel a lot and spend time in communities across Australia. My heart still breaks when I spend time with people who live in poverty and experience being locked out of mainstream life. It's really hard, having to add up item by item in the supermarket, hoping you've got the total right to avoid the humiliation at the check-out of not having enough money. It's terrifying, sitting with your wheezing asthmatic child in the middle of the night unable to get to a doctor as you have no car and can't afford a taxi. It's grinding, moving home far too often from one insecure low cost rental dwelling to the next.

In spite of the economic boom we've just enjoyed, more than 1 in 10 Australians, many of them women, struggle to survive and make ends meet in the face of overwhelming daily disadvantage and exclusion. 1 in 10 is an appalling statistic in a country like ours. I'm betting that at least some of you are feeling that none of this has much to do with you. While the most senior people in your workplace are still predominantly men, you can see that changing by the time your cohort gets to the top. You co-parent with your partner and buy in care when needed. You dry clean your suits, have a cleaner in once a week, eat out a lot or buy a lot of organic ready made meals during the week. You have figured out how to throw money at your time problem.

I'm not knocking that. It's a smart, adaptive approach to the inflexible nature and expectation of our professional environments.

You may not have the financial pressures nor experience exclusion and barriers to participation to the extent that women on welfare do, but life for professional women like yourselves is still not all a bed of roses.

One in three Australian women have experienced physical violence. One in five Australian women have experienced sexual violence. In any year, nearly half a million Australian women experience physical or sexual assault by a current or former partner. These confronting statistics cross socio-economic boundaries.

There is a significant difference in average weekly earnings for men and women. While full-time adult earnings for both women and men increased by more than half in the ten years to 2007, over that period women's earnings were consistently lower, by around 20%. That's right, men earn, on average, 20% more than women. When I trawled the data, I could not find one sector in which women earn more than men. From mining to manufacturing, from retail to finance and marketing, from government and administration to hospitality to recreational

> continues on page 26



VICTORIAN WOMEN LAWYERS SPONSORS DINNER



WOMEN LAWYERS ASSOCIATION OF QUEENSLAND AWARDS



**THE UNVEILING OF THE PORTRAIT OF THE HONOURABLE JUSTICE BALMFORD,**



**THE FIRST FEMALE SUPREME COURT JUDGE IN VICTORIA**

25  
VICTORIAN WOMEN  
LAWYERS

and cultural services to media, we earn less. Even in those bastions of women workers, the education, health and community services sectors, men still earn more. Earlier this week the fact that the proportion of women in management across Australia has dropped from 12% to 10% got a run.

And the news from the home front is just as grim. ABS Time Use Surveys tell us that women spend, on average, nearly 3 hours a day on domestic activities, compared to the hour and a half devoted to the home by men. Women spend more time on purchasing goods and services, more on cooking, more on cleaning, and more on voluntary work and care than men. In 2006, women spent nearly three times longer each day on primary child care activities than men.

So women as a group still do not perform well on some very important indicators. What I want to put to you tonight though, is the idea that there are broadly two tracks for women in Australia today. The first track is for women who are privileged and have many options before them – and most of us here tonight would fall into that category. We don't have to worry about shelter tonight, or whether our children's bellies will be growling with hunger. We can afford a visit to the GP when required, and regular dental checkups. We are educated, healthy and have a high degree of autonomy over our lives and the choices we make.

On the other track are women whose environment is characterized by lack rather than plenty. Women who struggle to live with dignity every day. Women living in locationally disadvantaged areas, where no-one has a job, who experience poor health, who worry constantly about safety and making ends meet.

I wonder what Lesbia Harford would think about these two classes of Australian women? I wonder what she, as a professional woman herself would say to us about our relationship with disadvantaged women? Luckily, I not only wondered, but committed my reflections to paper...

I think that Lesbia would be delighted that this annual oration provides an opportunity for women lawyers in this state to gather to engage with issues of significance to women. I am sure that if she were here she would be agitating from the floor for collective action to close some of the gaps and address some of the inequities I've spoken about.

I suspect that she might caution us against letting our collective identity as women be superseded by that of our individual identities as middle class professionals. She might remind us of the feminist principles of solidarity and community.

She might challenge us about when we collectively stopped

noticing those in our communities who are left out and missing out. She might ask us why we stopped agitating for fundamental social change that enables all women to live a decent life and claim their place in our communities.

I think that we can find the answer to some of Lesbia's putative questions in our constructs of the notion of rights. Different theorists speak of individual and group rights, of civil and political rights, of social, economic and cultural rights. Most progressive thinkers embrace an understanding of human rights that moves beyond an atomistic view of the person focused on individual liberties to a more communitarian framework in which the underpinning of human rights is communal. If something is a right because every person has a right to it, then by nature such rights are communal, because the community ensures each member enjoys the same basic rights. Most of the economic, social and cultural rights by their nature are explicitly communal, such as the right to culture itself, and the right to freedom of association. Most of the basic human rights address issues of people being excluded from communities. It is those who are marginalised who are most likely to be excluded from community through being denied access to housing, education, equal standing in the judicial system, and the ability to have a voice in how they are governed.

Women's rights, of course, are distinguished from broader human rights on the basis of the particularities of the exclusions and discriminations women experience. Women's rights issues include equal pay, paid maternity leave, autonomy in decision making about one's own body, and partnering and parenting rights.

I have a strong preference for a communitarian approach to rights, based on a more relational view of society. In the community sector, for example, we relate with those using our services not as isolated individuals, but as individuals-in-relation. In relationship with others, with the environment, the economy, their communities. This understanding leads to a place where people identify with others, and on that basis protect the rights of others regardless of their own interests. It implies that in politics and public debate people can speak from a values perspective, not only from self interest. With our relationally embedded sense of identity, women have a significant contribution to this perspective, here and around the world.

So. It's important that every Australian woman gets a fair go. It's important that we get it right on adequate and equitable welfare payments, on paid maternity leave, on access to quality childcare. That we ratify the Convention on the Elimination of All Forms of Discrimination Against Women. That we ensure



that every woman can access basic supports and services, including safe and affordable housing, and transport, health and education.

Protecting women's rights does not just confer benefits to women. Because of our "glue" role in our households and in the broader community, protecting women's rights builds the capacity and strength of the whole community. Efficient and effective!

I reckon that Lesbia would want us to consider joining the dots between a cognitive understanding of the importance of justice and equity, of the protection of women's rights, and action. If not us, then who? If not now, then when? Things will only get tougher for those most vulnerable as our economic situation worsens. Now is the time for we "first track" women to speak up, to act in pursuit of a fair go.

I don't want to live in an Australia in which it's ok that 11.2% of the population is living in poverty. I don't want to live in an Australia in which over 100,000 people are homeless, where over 600,000 people are on public dental waiting lists, where our two million welfare recipients can't access the supports and services they need to get and keep a job while trying to survive on woefully inadequate payment levels.

I want to live in a country in which every citizen is valued. Where every person has the opportunity to participate in and contribute to their community. Where government takes a strong lead in delivering social justice and inclusion for all. Where diversity is celebrated. And where all of us, as citizens and as women, do what we can where we are to make a difference.

I know that the word solidarity is deeply unfashionable. But I don't care. If feminism is to mean anything as we reform the remaining structural barriers for those women left out and missing out, then we need to reclaim the idea and act of solidarity. Those of us who are the haves must stand with those who are the have nots. We must create and hold safe spaces for the voiceless to speak and be heard. We must listen respectfully to the lived experience of disadvantaged women and use our power and privilege to agitate for policy and legislative change.

Solidarity as a guiding principle can locate us firmly in the broad community of women, moving us beyond the notion of individual rights to embrace a communal construct of rights grounded in an understanding of society that we are all inter-related, and that all of us are better off when none of us fall behind.

You are here tonight as professionals, gathered as a professional community. You understand how to influence systems and structures. You know about the getting and wielding of power.

As we celebrate a century of women's suffrage, I urge you to use your personal and professional power for the common good. Let's work, where we are, with the tools we have, for justice and for hope, to transform Australian communities to be places of connection and belonging for everyone. Let's work and hope together for a fair and inclusive Australia in which all people have the resources and opportunities they need to reach their potential, and participate in and benefit from social and economic life.

As Margaret Mead famously said "People say to me that the actions of a few won't change the world. I tell you, it's the only thing that ever has".

Thank you."



'Reclaim the night banner' - 2008 by Artist Fern Smith

*Lin Hatfield-Dodds is President of the Australian Council of Social Service, National Director of Uniting Care Australia and the 2008 ACT Australian of the year.*



## "FETO FORTE – NASAUN FORTE" (STRONG WOMEN, STRONG NATION) CHRISTIANA KOUPII

The Alola Foundation has come a long way since Portia's last article in 2006 featuring the East Timor First Lady, Kirsty Sword Gusmao, where she gave an account of women's lives in Timor-Leste. Alola is the childhood nickname of a young East Timorese girl that was kidnapped by a militia leader and taken to Indonesian West Timor during the violence of September 1999. She was 15 years old. Alola's story flagged a new beginning for the women in East Timor with the Alola Foundation at its lead. The Foundation will leave its mark on this culture and many women, extending well beyond the duty of care of any human being.

### What does the Alola Foundation do?

Originally the Alola Foundation was created through Ms Sword Gusmao to raise awareness of people trafficking and sexual violence against women and girls but today with over 100 employees the Foundation has a widespread focus in many areas such as maternal and child health, education, advocacy, economic development, management.



The First Lady kindly made this contribution to our article:

*"I am very pleased to know that the Portia magazine is featuring the Alola Foundation in its newsletter again. Much has happened since the last article published in 2006. Alola now employs over 100 people, providing a great range of programs in maternal and child health, education, economic development and advocacy. We have a strong presence across Timor-Leste's 13 districts through our District Support Worker program which employs local women to help strengthen women's groups across Timor-Leste including Alola's mother support groups, handicraft producer groups and action networks. Our education programs focus on literacy, early*

*childhood development and training of teachers in creative, engaging teaching methodologies. Our sewing centre now employs 20 women to produce high quality products for our Alola shop and maternity packs for women who give birth in a clinic or hospital. And we practice what we preach. Alola staff are provided with paid maternity leave, onsite child care and space for mothers to breastfeed their babies. All Alola's programs aim to improve maternal and child health, create employment, promote human rights, strengthen community development, and boost the status of women.*

*Alola's slogan – "Feto Forte – Nasaun Forte" "Strong Women, Strong Nation" continues to inspire us all. For we know that when women find a voice and assume leadership roles in the community, the entire community, and by extension the nation, benefit"*

*Thanks,*

*Kirsty Sword Gusmao*

*Chairwoman, The Alola Foundation*

*[www.alolafoundation.org](http://www.alolafoundation.org)*



Jill Forsyth, a member of "Alola Australia" in a recent interview with Portia magazine has commented on Ms Sword Gusmao's extraordinary effort to support the East Timorese women. Jill says that when the Foundation was created there were only 3 people involved. This grew to 15 – 20 staff who had Australian mentors to learn the basics such English, management and computer skills and today these women are running the programs themselves and teaching others.

### What projects is the Alola Foundation currently developing?

The Foundation is constantly working to involve the younger generation as much as possible in an effort to continue with the traditions of Timorese culture and help provide for better education. Up until now, there have been very few books in schools and a lack of resources for the children in their own language, Tetum.

Jill informed us that, a significant project the foundation is currently working on is translating story books including Mem Fox's book which tells children that 'whoever and wherever they are, we are all the same'. A set of 10 grade one level books has just been sent off to the printers, and these will be delivered to schools along with appropriate teacher training.

Another difficulty in developing countries is that the media is often still in its infancy. Alola has developed a District Support Worker program to help disseminate health information for mothers, to support women and strengthen women's groups, and help advocate on women's issues. This is usually delivered via four wheel drive vehicles, with more and more use of media such as DVDs and movies.

*"The number of people they( Alola) touch is amazing..." Jill says "...because of Kirsty's foresight and dedication over so many years – the people listen to her."*

### How is the Foundation linked to Melbourne?

Melbourne is linked to this organisation as the founder, Ms Kirsty Sword Gusmao is originally from Melbourne where supporters of the Foundation have gone through a process of setting up structures and creating Alola Australia and the Friends of Alola groups.

Ms Sword Gusmao, as Jill comments, is still very much involved in the Foundation and chairs the Board of Fundasaun Alola constantly working on Alola's development to ensure that the East Timorese have better opportunities.

### How can we support the Foundation from Melbourne?

Jill states that the simplest thing is to send donations. Buy a gift voucher for a family for Christmas or put a jar in the office or establish an Alola Friday to raise money and awareness.



In a country where a dollar a day feeds a family, contributions don't need to be large to show ongoing support. Sustained friendships are also important for the continued journey which lies ahead of the Alola Foundation.

A year 11 student started a fundraiser on her own and raised \$1000 for the donation. The school donated another \$800 to contribute to her efforts. In Year 12 she was elected social services captain and \$25,000 was raised through student fundraising for the Foundation!

The smallest contribution can make a difference!

Kirsty's message in Melbourne in September was to consider your strengths, what you have to give. It could be money, or supporting the Alola shop online, it could be time spent volunteering with other friends of Alola, or travellers could plan to visit Timor-Leste, only 1 ¾ hours from Darwin. Everyone is invited to visit the Alola website [www.alolafoundation.org](http://www.alolafoundation.org)



## Women mentors scheme kicks off in Victoria

BY LAURA MACINTYRE

DEMAND STILL outstrips supply, but there will soon be more opportunities for law students in Victoria to meet and learn from members of the profession first-hand, thanks to an initiative of the two peak bodies that represent women lawyers in the state.

Victorian Women Lawyers (VWL) and Women Barristers Associations (WBA) have joined forces to provide a mentoring program for law students in Victoria. The program was officially launched by Chief Justice Marcia Neave this week at the offices of DLA Phillips Fox in Melbourne.

VWL Convener Christine Melis explained the background to the scheme, recounting the now-familiar statistics about the dramatic drop in the number of women lawyers in the upper echelons of the legal profession,

"[More than] 70 per cent of law graduates are female – we know this, and we've known this for a

very long time. Yet the number of female partners is less than 20 per cent, it's minimal and women are dropping off at certain stages after about three to five years," Melis said.

"We are very conscious of this and we don't know what exactly the reasons are, but they can include disillusionment, women not quite knowing which direction to take in their careers, [the lack of] proper mentoring or having influences and mentors in their life that they aspire to be like, or not being able to find the proper support networks within their organisations that will allow them to have a family."

Melis said that law students at Monash University had made clear their desire for more structured mentoring opportunities.

"While there have been attempts at mentoring programs before through various other organisations, including VWL, it's been sort of on an ad-hoc basis," said Melis. "And we wanted to join

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forces this time around and really establish a hall-mark mentoring program."

The program has invited expressions of interest from students at all the universities in Victoria offering legal degrees, including Monash University, Melbourne University, Deakin University, La Trobe and Victoria University. More than 300 students have signed up for a mentor, and, at this stage, supply exceeds demand.

"I guess that in itself is a real indicator of the need for such a program among law students," Melis said.

"Interestingly, we even had quite a few emails come through from article clerks asking if they could be involved – but this time round we have confined it to students. But certainly seeing that there's been interest from AC's as well, it is something that we're keen to pursue perhaps next year."

The launch will offer a chance for the mentors and their charges to meet for the first time, and in addition to drinks and canapés, guidelines for the mentor program will be distributed.

Each pair will be encouraged to meet on a monthly basis for the six-month duration of the scheme. Aside from that, Melis said, the guidelines are not set in stone – but the organisers hope that the program will offer students the chance to attend chambers, court or visit their mentors in the office environment.

Mentors will also assist students with questions about seasonal clerkship applications and discuss the new traineeship system about to come into force in Victoria.

## Flexible work still has firms in a twist

FOLLOWING ON FROM JOB-SHARE INITIATIVES RELEASED IN 1996, VICTORIAN WOMEN LAWYERS HAVE LAUNCHED A TRIO OF FLEXIBLE WORK PROTOCOLS TO HELP FIRMS EMBRACE MEASURES TO ACHIEVE BETTER WORK/LIFE BALANCE FOR EMPLOYEES, WRITES LAURA MACINTYRE

FLEXIBLE WORK practices continue to be anathema for the legal profession, despite the pressure from frustrated lawyers demanding that firms embrace measures to achieve better work/life balance.

Three new flexible work protocols, intended to form the framework for "a new way of working", were launched by Victorian Women Lawyers at the Melbourne office of Mallesons Stephen Jaques on Wednesday 27 August.

VWL has drafted the protocols to cover flexible, part-time and work-from-home arrangements to act as a guide for both employees and operators.

The workplace flexibility protocols follow on from the success of the job share protocol released by VWL in 1996, and provide a template to discuss flexible work arrangements, expectations and prompt regular reviews of these agreements to assess whether they are working successfully for both sides.

VWL Convener Christine Melis says that the protocols are designed as a starting point for negotiation – to open up the dialogue about flexible work practices in law firms, for both male and female members of the profession.

"The idea behind them is to keep alive the dialogue in relation to work and lifestyle, and to really bring to the fore the idea that work/life balance is not just a gender issue, but very much a family issue and a social issue."

Flexible working arrangements don't fit particularly well within the traditional law firm model with its client driven meeting schedules and emphasis on billable hours. For the most part, part-time and work-from-home arrangements have been met scepticism among the profession since they first emerged. More than a modicum of this scepticism remains, according to research conducted by VWL.

"Last year we held a roundtable discussion with people in the profession who worked flexibly, and that was a very open and confronting discussion," says Melis. "A lot of people were of the opinion that flexible work arrangements and the legal profession is a difficult proposition."

Areas of concern identified by the roundtable included the restrictions on lawyers involved in high-stakes litigation and transactional work. The challenges facing practitioners in these specialist areas will be addressed by a series of forums organised by VWL in coming months.

Even for those in general practice with more predictable workloads, the issues surrounding flexible work remain complex.

"We often hear from our members that it's just too hard to work in a flexible work arrangement," says Melis, "or that they feel like they are doing the same number of hours in less days, or that there is still that guilt when they leave early, even though it is part of the arrangement. There is a need for that cultural change within the firms."

As a consequence, many part-time or flexible workers are missing out on workplace norms that full-time lawyers take for granted. An 8am meeting may conflict with agreed childcare arrangements, while staffers who are not regularly onsite may be overlooked for inclusion in impromptu events such as general staff meetings. There is also a risk that flexible workers will miss out on vital opportunities for professional development and career advancement within the firm, Melis says.

"We've gotten a lot of feedback from people in flexible working arrangements that they often miss out on business development initiatives within the firm, or they are not getting as much opportunity to fulfil their PDP points," says Melis.

Despite the emphasis on work-life balance and flexibility in firms' marketing and recruitment materials, there remains a significant gap between firms talking the flexibility talk and walking the walk.

"What we've seen so far in our work with law firms is that law firms already have in place very good written working policies, but that these don't necessarily translate into effective working relationships," Melis says.

"These sorts of things are what we need the profession to really start turning their mind to," she says. "Just because somebody is choosing to work flexibly or part-time or from home does not mean they are less loyal or less committed to their work or that they desire any less to be promoted."

The protocols are available to download in PDF format from the VWL website.



# Women lawyers group wins test case

Marsha Jacobs

The Australian Taxation Office has lost a test case on the definition of charities in a decision that significantly widens the scope of organisations that might qualify for valuable income-tax exemptions.

In a case funded by the Tax Office, the Victorian Women Lawyers Association succeeded in being classified as a tax-exempt charity despite engaging in some political activity — which has often been a barrier to classification as a charity in the past.

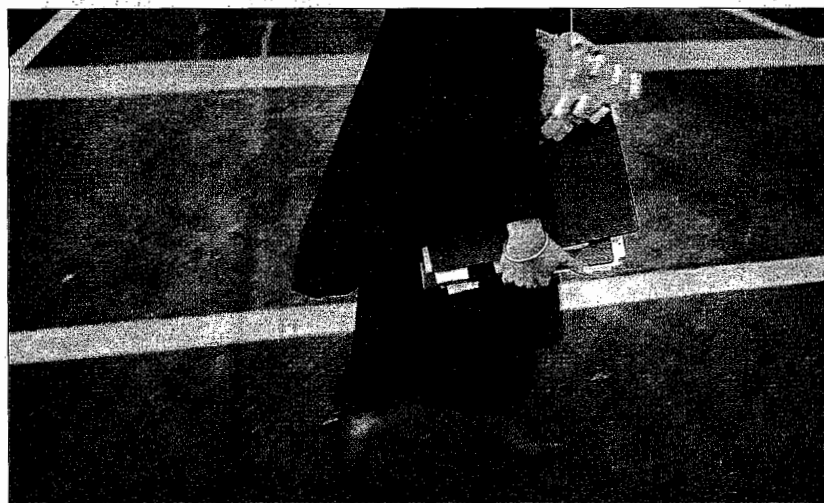
On Friday, Federal Court judge Robert French ruled that the association — which was established to “overcome a well-known social deficit, namely the substantial under-representation of women in the legal profession, in its upper reaches and in the judiciary” — was tax exempt.

“The political purposes limitation is not well defined and is more difficult of application today having regard to the change in social conditions [since it was established in 1917],” Justice French said.

The ATO is considering appealing the case.

Barrister Alexandra Richards, SC, who acted for the Women Lawyers Association, said that in the past an organisation that also had a political or lobbying dimension was often precluded from being classified as a charity.

“It is fair to say that this judgement re-visits the law on charities from the perspective of the 21st century and that it highlights that the



The court ruling recognises the advancement of women and women practitioners as a public benefit.

Photo: JESSICA SHAPIRO

to be defined as charities for the purposes of income-tax exemptions are not closed,” Ms Richards said.

She said the case was the first time the Federal Court had considered what a political or lobbying organisation was, and that its ramifications applied in a wider context than just to the association.

Victorian Women Lawyers Association convenor, Christine Melis, said Justice French’s decision was gratifying. “The advancement

as a public benefit has been recognised,” she said.

She said it was significant that the court “took judicial notice of ‘the long-standing and yet to be overcome differences between the position and participation of women and men in the legal profession in Australia in general and Victoria in particular’”.

The Taxation Institute’s tax counsel, Michael Dirks, said the judge had taken a wider view of what constituted a charity than the ATO

would imagine other industry groups would try to apply the decision to themselves.

“The judge in this case has taken a wide, but fact-based interpretation, of what a charity is,” he said. “There are some wide interpretations which have the ability to overturn previous decisions.”

Organisations for furthering a specific group of people, which have an incidental political role, would be very interested in the decision, he

## Tax-exempt ruling for lawyers widens scope

Marsha Jacobs

Victorian Women Lawyers had two wins in the one case in the Federal Court last week.

Federal Court judge Robert French ruled last Friday that the VWL — which was established to “overcome a well-known social deficit, namely the substantial underrepresentation of women in the legal profession, in its upper reaches and in the judiciary” — was a charity and therefore tax exempt.

This victory against the Australian Taxation Office significantly widens the scope of organisations that might qualify for valuable income-tax exemptions.

But VWL also succeeded in having a judge take on judicial notice the disadvantage of female practitioners in the profession.

Judicial notice means that a

matter is considered to be “common knowledge” under the Evidence Act and does not need to be proved in court.

Justice French referred in his decision to the “longstanding and yet to be overcome differences between the position and participation of women and men in the legal profession in Australian in general and Victoria in particular.”

“The social fact propounded was the historical and persisting disadvantage of women in relation to their participation and career advancement within the legal profession,” Justice French said. “At that level of generality there was no dispute. I am prepared to take judicial notice of it.”

VWL convenor Christine Melis said: “The court has characterised [females] disadvantage as a social fact.”





Office of Public Prosecutions principal solicitor, organised crime, Vicky Prapas, County Court Judge Felicity Hampel and Legal Services Commissioner Victoria Marles

# Celebrating women in law

THE LATEST STATISTICS ON VICTORIAN PRACTISING CERTIFICATES PROVIDE A SNAPSHOT OF THE LEGAL PROFESSION AND WHERE WOMEN LAWYERS ARE WORKING.

Women made up about 60 per cent of young lawyers in Victoria with under five years of legal practice but many left private practice as they became more experienced, Legal Services Commissioner Victoria Marles told a seminar for women.

"It is true we are not seeing women stay in private law firms... so where are they going?," Ms Marles said at the May "Celebrating women in law" event.

"An increasing number are going to inhouse roles. More female practitioners are

## LEGAL PRACTITIONER STATISTICS

Number of practitioners who hold a current Victorian practising certificate by type, age and gender as of March 2008

### MALE PRACTITIONERS – age in years

	20-30	31-40	41-50	51-60	61-70	>70	TOTAL
Corporate	126	451	250	138	29	4	998
Employee	840	741	279	213	161	42	2276
Principal	132	463	588	704	369	74	2330
Principal (w. trust)	16	396	888	1073	442	44	2859
Volunteer	10	13	7	6	3	0	39
<b>TOTAL</b>	<b>1124</b>	<b>2064</b>	<b>2012</b>	<b>2134</b>	<b>1004</b>	<b>164</b>	<b>8502</b>

### FEMALE PRACTITIONERS – age in years

	20-30	31-40	41-50	51-60	61-70	>70	TOTAL
Corporate	215	628	285	84	7	0	1219
Employee	1372	1023	349	138	47	4	2933
Principal	117	299	266	162	43	9	896
Principal (w. trust)	19	190	230	133	43	7	622
Volunteer	21	21	10	5	3	0	60
<b>TOTAL</b>	<b>1744</b>	<b>2161</b>	<b>1140</b>	<b>522</b>	<b>143</b>	<b>20</b>	<b>5730</b>

Source: Legal Services Board

practising in government, community legal centres and inhouse."

The latest statistics on practising certificates, supplied to the *LIV* by the Legal Services Board (LSB), reveal that the number of corporate lawyers overall in Victoria has jumped 56 per cent in the past five years – up from 1420 positions to 2217.

Women make up the majority of corporate lawyers (55 per cent), with their numbers rising 65 per cent over the past five years from 740 to 1219.

The statistics also show women outnumbered men as employee solicitors as of March this year, with 2933 women to 2276 men.

Victorian Women Lawyers convenor Christine Melis said that since the mid-1980s, more women than men had been graduating from law school and had been admitted to practice.

But she said men still greatly outnumbered women in senior positions, particularly in partnership numbers at law firms.

The latest statistic she had available was a November 2005 study of *LIV* practising certificate holders showing that 86 per cent of partners (excluding sole practitioners) were men.

"The argument that the so-called funnel effect will, by the effluxion of time, lead to more women in senior positions is not supported by these statistics," she said.

"More needs to be done to increase women's access to and participation in senior positions."

The LSB statistics reveal that in March this year the number of women who held the position of principal or principal with trust had risen by 32 per cent since 2003 to 1518.

But this represented only 23 per cent of the total number of lawyers who were principals or principals with trust.

However, there might be a sign that the gap is slowly closing. In the 12 months to March this year, the number of women who



County Court Judge Felicity Hampel

held the position of principal or principal with trust in Victoria had risen by 161 (up 12 per cent) compared to male principal numbers rising by 54 (up 1 per cent).

Overall, the statistics reveal that women make up 40.2 per cent of the Victorian profession's 14,232 lawyers – up from 35.2 per cent in 2003.

Of all the female lawyers practising in March this year, the majority (68 per cent) were aged in their 20s and 30s; while 73 per cent of all the male lawyers were spread evenly across their 30s, 40s and 50s.

Office of Public Prosecutions (OPP) principal solicitor, organised crime, Vicky Prapas, who also addressed the women's seminar on 9 May, said female law graduates had made up 73 per cent of applicants for the OPP's legal traineeship program for 2009.

## WORK WISDOMS

Tips from women who are leaders in the legal field.

**Legal Services Commissioner Victoria Marles:** "Remember you are not on your own" and "Keep calm and carry on".

**County Court Judge Felicity Hampel:** "Successful women in the law are successful women in their other lives as well" and "Seize the day, whatever it holds – if you don't like what it holds, discard it and go for something else".

**Office of Public Prosecutions principal solicitor, organised crime, Vicky Prapas:** "Seek out mentors, work/life balance and people who can guide you" and "Throw yourself into what would otherwise petrify you".

She said women made up 60 per cent of the solicitors at the OPP, and 26 per cent of the Crown prosecutors.

Ms Prapas advised the 70 women who attended the seminar to seek work/life balance and various mentors throughout their careers.

Another speaker, County Court Judge Felicity Hampel advised the seminar attendees to maintain relationships with friends and colleagues throughout their careers.

"It is so easy if you want to make a success of your career... to say this must come first and to put work, clients and perhaps career and ambition ahead of our friends," she said.

"But it is ultimately a less fulfilled life if you don't have relationships that you have given priority to as well." •



Justice Marcia Neave



## Ladies who launch

The VWL/WBA Student Mentoring Program 2008 was launched at the Melbourne offices of DLA Phillips Fox on the evening of 24 July by patron Justice Marcia Neave. The launch was an opportunity for the mentors and their charges to meet for the first time. The program pairs law students with volunteer mentors from across the legal sector, and organisers hope to expand the program next year.

"There was a real sense of excitement in the room and energy," said VWL Convenor Catherine Melis, "what made it so inspiring was the combination of mature age students and final-year students who were just really excited at the prospect of having a one-on-one relationship with somebody in the profession."

*Lawyers Weekly* will be following some of these mentorship pairings with coverage in upcoming issues.



## Get flexible: it's reasonable



ATTITUDES TO FLEXIBLE WORKING HAVE CHANGED, REFLECTED IN WORK PRACTICES AND DISCRIMINATION LEGISLATION, WRITES **CHRISTINE MELIS**, CONVENOR VICTORIAN WOMEN LAWYERS

The legal workplace is evolving. Firms are facing requests from lawyers to go part-time, work flexible hours or work from home. What form the work arrangement takes is not so much the point as the management of that work arrangement by both employer and employee.

On Wednesday, 27 August 2008, Jaala Pulford MLC, Parliamentary Secretary for Industrial Relations, launched three new protocols developed by Victorian Women Lawyers (VWL) on working flexible hours, working part-time and working from home – guidelines for the employer and operator in making a successful work arrangement.

The launch of the protocols coincided with the commencement of the family responsibilities amendments to the *Equal Opportunity Act 1996* (Vic) which expand the definition of what constitutes discrimination against parents or carers in employment and employment-related issues.

Under the new laws an employer, a principal or a firm must not, in relation to work arrangements, unreasonably refuse to accommodate a person's parental or carer responsibilities.

The new laws do two things: tackle systemic discrimination in the workplace; and make flexible work arrangements a family issue and not a gender issue.

It is true that at present more women than men take up flexible work practices, most

commonly for family reasons. There are also men, however, who wish to work flexibly, to spend more time with their kids and to share domestic duties with their partner.

It is unfortunate then that often men who choose to work in flexible arrangements are deemed 'soft' or as somehow having lost their "breadwinner" status in society.

### A CHANGE IN PERCEPTIONS

How can we change these perceptions? Changing discrimination laws is a start, but the application of those laws will be defunct if not supported by adequate education and leading by example in the workplace.

For the legal sphere this also means facing the challenges of a long hours culture, a "visibility equals productivity" mantra and a system of billing that commodifies every minute of our working day. Identifying these factors then begs the question: "Can flexibility ever be a viable reality in the legal world?"

The resounding answer is "yes" and we are hearing it from the managing partners of our top-tier Melbourne firms. In talks with partners of law firms there is a genuine acknowledgment that flexibility can be achieved; that making the effort will positively impact on retention rates and economic viability.

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### FLEXIBILITY FORUM

VWL recently ran a "first of its kind" forum for managers/partners of VWL sponsor firms who have experience managing a lawyer working flexibly within a transactional practice. This pilot focus group drew together partners of transactional practices in an attempt to exchange ideas on better management of lawyers working flexibly.

This initiative, "Do You Manage?" is a direct response to the recommendations made in the VWL report, "360 Degree Review: Flexible Work Practice – Confronting myths and realities in the legal profession" of 2006 which identified attitudinal barriers to the effectiveness of flexibility in the legal workplace among those wanting to work flexibly, partners/manager, clients, support workers and co-workers.

The forum acknowledged that implementing flexible work practices is a challenge, but found that the partners and law firms viewed it as a challenge worthy of meeting head on.

Initiatives such as "Do You Manage?" play an important role in encouraging an open and continued dialogue on the issues of work/life balance. The forum will be rolled out to partners of litigation groups and human resource managers in 2009.

### ACCOMMODATING BEHAVIOUR

By no means are we saying that all flexible work arrangements run smoothly or that they are all conducive to a better quality of life and rewarding work in every arrangement.



"Every person is different and has differing competing priorities in their lives. Some do not see 'doing it all' as a challenge, others do."

The legal sphere is battling embedded cultural restrictions. However, outdated attitudes are lessening – especially with the injection of Gen Y. There is recognition by decision-makers that change is inevitable given the talent shortage, international movement and expectations that younger lawyers have a keen interest in work/life balance.

In talks with Melbourne law students it is clear to me that they are acutely aware of the long hours culture within firms and the strict billing practices and that this is not an environment they want to be entering.

Requesting a flexible work arrangement is not about asking for a favour. This person should not be viewed as being any less committed or loyal to their employer or any less interested in promotion.

Every person is different and every person has differing competing priorities in their lives. Some do not see "doing it all" as a challenge, others do. It is about retaining talent and accommodating, reasonably, requests made for a flexible work arrangement.

The amendments to the *Equal Opportunity Act* which come into effect on 1 September 2008 will aid in keeping the debate alive. The exchange of ideas and views of what constitutes reasonable accommodation and how can we better work arrangements within the framework of the law firm need to continue if we are going to take the issues of family, lifestyle and work seriously.

As the HREOC report, *It's About Time: Women, Men, Work and Family*, identified, work/life balance is "the topic of the 21st Century for families, employers and government".

On Thursday 24 July, over 50 lawyers, barristers and law students gathered to launch the Law Student Mentoring Program for 2008. This year's program attracted a record number of law student applicants, reflecting the perseverance of co-ordinator Kate Ashmor. Over 80 lawyers and barristers volunteered to become mentors in the program.

In introducing the evening, Victorian Women Lawyers Convenor Christine Melis told of a chance observation of the foremost of mentoring relationships: that between a mother and child. Women Barristers' Association Convenor Joy Ellerau emphasised the importance of mentoring junior females embarking on their legal careers. This was followed by Peter Rashleigh, Partner of launch sponsor DLA Phillips Fox, who recalled the formative influence which his own mentor provided, and the lifelong friendship that has resulted.

Justice Marcia Neave AO of the Supreme Court of Victoria, delivered an inspiring and entertaining speech to launch the program. Her Honour noted that mentorship provides not only encouragement, but also the opportunity to gain another's perspective on one's practice and beliefs. Giving a nod to the poetry of Robert Burns, Her Honour highlighted that the perspective of a mentor can challenge the ways in which we view ourselves, as both women and lawyers, but also as members of the community.

### **2008 LAW STUDENT MENTORING PROGRAM GUIDELINES AND TIPS**

It is envisaged that the program will run for six months, with at least a one-hour, face-to-face meeting each month between July and December 2008. Meetings could occur over coffee, at lunchtime, in the mentor's office etc. Pairs are welcome to meet more often and to supplement meetings with emails – it's entirely at their discretion!

Here are some suggested topics to cover during your discussions, although not all topics may be relevant to all pairs:

1. Securing seasonal clerkships/articles/traineeships.
2. Volunteering and pro bono work.
3. How to become a barrister or judge's associate.
4. Moving to an in-house corporate or government role.
5. Maintaining a work/life balance.
6. Career progression and negotiating office/bar/corporate/government politics.
7. Participating in law reform and policy development.
8. Working interstate and overseas.

And here are some tips for maximising your experiences:

#### **Mentors**

- Be encouraging and patient towards your student – they're probably a bit nervous so it may be helpful to initiate early contact and discussions.
- Emphasise both the positives and negatives of your experiences, to provide a balanced view.
- Provide practical and general advice – avoid limiting discussions to your current area of practice.

#### **Students**

- Appreciate that your mentor is a busy person and that they have volunteered their time to guide you, so always be punctual and courteous.
- Listen carefully to your mentor's advice and feel free to them ask questions about their professional experiences.
- Be open to discussing broad topics, not just your area of interest in the Law. Aim to learn and absorb as much as you can!





## VWL MEMBERS AND GUESTS EVENING ANNA TUCKER

On Tuesday, 5 August 2008, the VWL hosted a Members and Guests Evening.



VWL Members and their invited guests met at The Apartment, Little Bourke Street, for an informal get together. The event was an opportunity to find out more about VWL and to meet with other women lawyers for conversation and networking.



Members and guests enjoyed drinks and lively discussion while renowned magician Cath – Woman of Deception worked the room. VWL Convenor Christine Melis gave a brief address, highlighting the many achievements of VWL over the past year, including the significant victory against the ATO. Door prizes were awarded to conclude the evening, with many attendees enjoying prizes donated by the night's sponsors.

## WOMEN MEET, GREET, SHARE A LAUGH... CHRISTINE MELIS

Comedian Rachel Berger provided the laughs; Victorian Women Lawyers provided the solicitors; and Women Barristers Association brought along the barristers. Put them all together and what do you get? The annual VWL/WBA Meet and Greet soiree.



Every year the VWL and WBA bring their memberships together for an evening at the Essoign Club for some relaxed networking over drinks and canapés. Guests are encouraged to meet new solicitors and barristers, particularly those who share a similar practice.

Lexis Nexus is a proud sponsor of this annual event.

On 15 October, VWL joined forces with the Australian Corporate Lawyers Association to host a special members only event at Juliet's Champagne Bar in Melbourne's iconic GPO. Surrounded by art screens specially created for the event by artist Ryan L Foote, who has creating numerous installations for fashion shows and events including Rosemount Australian Fashion Week and L'Oreal Melbourne Fashion Festival, guests enjoyed champagne and hór deuves as they listened to one of Melbourne's hottest Dj's Mu Gen.



VWL and ACLA members networked and listened to Carmelle Pavan from the GPO talk about the GPO and its history and the many retailers who supported this event such as Georg Jensen, Karen Millen, Zimmerman and Cacao Fine Chocolates. One lucky guest Margaret Kingston from the Royal Children's Hospital walked away with a stunning gift from Georg Jensen, a neck piece in sterling silver with a rhodium coating featuring a daisy design. All guests were offered individual styling sessions with Karen Millen and left with a gift bag laden with special offerings and treats.



This event was made possible with the generous support of Michael Page Legal, the amazing work of Rachel Tuffery and her crew at the boutique events management company Pronto Productions and of course a host of VWL and ACLA volunteers led by Katherine Briggs and Alex Neskes.

**"DO YOU MANAGE" —**  
**FIRMS COLLABORATE ON FLEXIBLE WORK PRACTICES**  
**AMANDA STEVENS**

VWL would like to congratulate the following firms, and more specifically the 27 partners from their transactional practices, for participating in the recent "Do You Manage" Workshop run in August by the Work Practices Committee of the VWL.

- Freehills
- Clayton Utz
- Minter Ellison
- Allens Arthur Robinson
- Middletons
- Mallesons
- DLA Phillips Fox
- Blake Dawson
- Corrs Chambers Westgarth

This inaugural workshop was ably facilitated by Kriss Will from Kriss Will Consulting was aimed at openly discussing the challenges of managing flexible work practices in transactional practices, by those who actually do it. By fostering open and constructive dialogue on flexible work arrangements, VWL is endeavouring to bridge the gap between employer and employee expectations. Promoting successful ways of managing and participating in part time or other flexible working arrangements will encourage more women to remain in the legal profession and advance within its ranks.

The workshop left attendees with one big message — flexible work practices in transactional groups can and does work successfully.

Partners saw clear benefits to their practice and employees where flexible work arrangements (which was most often in the form of part time work) are supported and appropriately managed. Part-timers were recognized and valued as amongst the most efficient and productive workers.

Partners in transactional groups identified the following success factors:

- pairing of a part-time worker with a full-time worker on a transaction;
- clearly defined roles amongst the team;
- management of expectations of both employee and employer;
- planning by the partners to be more efficient and organized in advance so as to maximize the part timer's time;
- other partners supporting and assisting the partner managing part timers;
- part timer being contactable on non-work days

- management of the whole team so arrangement is fair to all; and
- recognition that each arrangement is different and must be revisited as the arrangement evolves.

The workshop identified that more work was needed on supporting and assisting the partners undertaking the extra management required and on how to ensure adequate work quality and career progression for lawyers working flexibly.

VWL will roll out several more workshops with focus groups from litigation groups and Human Resource Managers in the New Year.



'Surely I'm not excluded' - 2008 by Artist Fern Smith

## MAKING YOUR MONEY WORK HARD FOR YOU CAITLIN TIERNEY

On Tuesday 2 September 2008, Victorian Women Lawyers together with Maddocks, were pleased to present members of the profession with a finance seminar specifically addressing issues of consideration for women, in their approaches to wealth creation and asset management. Todd Clifford, Principal and Managing Director of Zest Wealth Advisers (a member firm of Genesys Wealth Advisers Ltd), kindly joined as guest speaker for the evening.

The seminar began with a discussion about the importance of acknowledging varying individual's circumstances when considering financial planning. Mr Clifford noted that 'regardless of what you currently have or have not in terms of investments and savings, the key to financial success is taking that first step and starting' a life long-process of wealth creation and planning.

A strong emphasis was naturally given to women's considerations when planning and investing. Future needs and goals, it was noted, may differ considerably to those of men. In particular, the need for review of wealth solutions is necessary in order to realistically accommodate women's needs as they change throughout their career. This may include balancing obligations such as family, children, home care, single lifestyles, and career progression. It was noted that currently half of Australian marriages are likely to end in divorce, and that half of divorced women over the age of forty five are living below the poverty line. Other considerations for women in relationships to be aware of include the potential for financially transferred debt as a result of joint business ventures and investments engaged in with partners. Further, Australian workforce figures have indicated that on average women spend twenty years less earning income in the workforce, are paid comparatively less compared to their male counterparts in the workplace, and comprise a significantly small percentage of the senior or management positions available in business structures.

Superannuation for women approaching retirement was also addressed, with figures quoted including that in 2019, the projected superannuation savings of women will be an average \$77,000 as compared with men's \$121,000. Despite Australian women being known to outlive men in life expectancy terms, 82% of women older than 65 currently rely on government pensions as their principle source of income. Women were recommended by Mr Clifford to obtain an understanding of how much they think they will need in order to retire comfortably, and then create a plan which can enable this to goal to fruition. They were also advised to work towards being debt free at the point of retirement, eliminating payments having to be made out of superannuation savings during retirement.

As far as investment, savings and wealth creation at large are concerned for women, the following basics of financial planning were highlighted throughout the evening:

- Avoid exposure to other people's debt.
- Be aware of superannuation savings. Salary sacrifice where possible, so to take advantage of the tax benefits.
- Financially plan for the unexpected.
- Understand your own cash flow, such as monitoring your outgoing expenditures as against your incoming earnings.
- Ensure you have death and total and permanent disability benefit cover through your superannuation provider. Would you benefit from income protection insurance were you to become unemployed and have pending mortgage commitments?
- Use a budget calculator where possible: be aware of, and track your spending, but also be realistic and accurate.
- Review your budget to adjust to your changing circumstances.
- Pay off your debts so you can start saving. However small, the earlier you start, the more the savings will compound with time.
- Create savings goals, whether based on an amount, a timeline, or a future purchase/investment.
- Think of yourself as a business, in terms of profits (income) and losses (expenses). If spending more than you earn, you would be an insolvent business. Make sure you pay yourself first, by contributing regularly to your savings.
- Identify and be smart with your surplus, and understand your assets and liabilities. Not all debt is bad debt (such as leveraging), if it is managed well.
- Always understand investment choices and their structures, such as who it is that owns the assets, whether the returns are sustainable, and what the risk involved is. If you don't know, keep asking.

If you would like further information to assist your financial planning, we recommend approaching a professional financial advisor, who may be able to assist with some of the above aspects of your path to wealth creation.

Justice French's decision is gratifying in all respects. His Honour's analysis of VWL's formation and evolution, activities, work within the legal profession, sponsorship, constitution and objectives, is very thorough. His Honour took account of all the materials and submissions put before the Court in VWL's advancement of the argument that it is exempt from any obligation to pay income tax on the basis that it is a charitable institution or an association established for community service purposes as applicable under the *Taxation Administration Act 1953 (Cth)* ('the Act').

The status of VWL has been articulated in detail by the Court, giving VWL's past and present executive committee, members and patrons, many of whom were the subject of affidavit evidence put to the Court, the comfort and knowledge that VWL's purpose of representing the interests of women in the legal profession through various activities and functions, has benefited and been directed not only to its members but also to the legal profession in Victoria as a whole. VWL's push for change in attitudes and practices affecting women within the profession has been held as not translating into a political purpose so as to take away the organisation's "charitable institution" status under the Act.

### **What the decision means for VWL and a look at the decision in detail**

The true nature or character of VWL has been assessed having regard to its objects, purposes and activities as required by the law in any inquiry about an entity's charitable status. VWL has been assessed holistically. VWL was formed in 1996 with aims to promote the interests of women in the profession, in particular by examining issues such as flexible work practices, discrimination, sexual harassment and by providing networking opportunities both between those within the profession and also with other relevant professional associations. And it continues to do so today. As his Honour succinctly said, VWL had 'an emphasis on creating an awareness in the profession and in government of the barriers to participation and career advancement of women practitioners, finding ways of reducing those barriers and creating opportunities for enhanced participation' [para 109]. This emphasis within VWL remains through its various research projects, publications, functions and seminars.

The advancement of women and women practitioners as a public benefit has been recognised. Significantly, the Court took judicial notice of 'the long-standing and yet to be overcome differences between the position and participation of women and men in the legal profession in Australia in general and Victoria in particular' [para 108]. The Court has characterized



this disadvantage as a "social fact", giving VWL credence and relevance in our society. This social fact is only confirmed by legislation, namely the *Sex Discrimination Act 1984 (Cth)* and Conventions, namely, the *Convention on the Elimination of All Forms of Discrimination Against Women*, which recognize the need to remove persisting gender based discrimination. There is still much to be done to advance women in the legal profession and VWL continues to promote the interests of women in all areas of law.



'Suffragist' - 2008 30x30cms oil on canvas by Artist Fern Smith

### Appeal?

On 25 July 2008, VWL was advised by the ATO that it will not be appealing the 27 June 2008 judgment of Justice French.

## CONVENTION ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN (CEDAW) COMMUNITY CONSULTATIONS ASTRID HABAN-BEER, CARMEN CURRIE

CEDAW is the major human rights treaty for women. CEDAW was ratified by Australia in 1983. As part of our obligations under the treaty, the government must report to the United Nations every four years on our compliance, progress and developments regarding CEDAW. Part of the reporting process involves consulting with the community. The CEDAW community consultation process was facilitated by the Office for Women (OFW), a policy advisory unit and a division of the Department of Families, Housing, Communities and Indigenous Affairs. The consultations involved meetings of representatives of women's groups in states and territories, and then high-level focus group Roundtables in Canberra in April 2008.

Victorian Women Lawyers was fortunate in being invited to send two members as delegates to the Canberra Roundtable discussions. Carmen Currie, a Senior Associate at Holding Redlich, attended the Indigenous Women Roundtable. Astrid Haban-Beer, a lawyer at the Australian Government Solicitor, attended the Migrant and Refugee Women Roundtable.

The Roundtable process was designed to capture the views of women involved, either professionally, or through volunteer work, in order to assist in the preparation of the Australia's 6th and 7th CEDAW country report, which will shortly be lodged with the United Nations.

### Migrant and Refugee Women Roundtable

The roundtable was attended by migrant advocacy groups, policy advisers, think tank representatives, academics, migrant health experts, women migrants, and refugee advocates, amongst many others. The following points were identified as key priorities identified by the Migrant and Refugee Women roundtable participants:

1. Review to ensure appropriateness of funding and increase in funding for migrant and refugee women's programs and NGOs, and ensuring that funding is ongoing.
2. Education and employment pathways: better consideration, support and funding for migrant- and refugee- focused programs.
3. Funding and support for migrant and refugee women to influence decision making.
4. Review of statutory provisions – e.g. visas and legislation that affects migrant and refugee women.
5. Access to basic services through mainstream programs which are targeted and properly funded – including anti-violence programs based on Australian-wide best practice.

Human trafficking, domestic violence and sexual abuse against women migrants was also a serious concern voiced by many organizations present. The VWL Migrant Women Legal Information Project was well received by the roundtable. The Project aims to produce publications in several languages that provide important information such as where women can access legal advice, explain the basic structure of Australian government, and explain the structure of the legal system. This project is still in its scoping phase.

### Indigenous Women Roundtable

The roundtable for Aboriginal and Torres Strait Islander women was attended by approximately 20 invitees from across Australia, who brought a tremendous wealth of experience and breadth of knowledge to the forum. Attendees worked in fields as diverse as crisis housing for Aboriginal women in the Northern Territory, support services for Aboriginal people with hearing loss, community legal centres and women's networks. The purpose of the roundtable was to provide feedback to the OFW on whether Australia was meeting its obligations under CEDAW in respect of the treatment of Aboriginal and Torres Strait Islander women in Australia. The response in this regard was a resounding "no". In addition to the ongoing issues that Aboriginal women face in obtaining even the most basic standards of living, such as housing, health and personal safety, particular concern was expressed in relation to the impact of the Northern Territory intervention measures on Aboriginal women.

Having discussed these issues, the women present were then invited to come up with a list of things they would like the Australian government to do better in order to meet its CEDAW obligations to Aboriginal and Torres Strait Islander women. The roundtable came up with the following list of recommendations:

1. That Australia should become a signatory to the UN Declaration on the Rights of Indigenous Peoples.
2. That Australia ought to ratify the Optional Protocol to CEDAW, which enables complaints to be made to the UN in relation to failures to meet CEDAW obligations.
3. That Aboriginal and Torres Strait Islander women be given proper acknowledgment and rewards for the time and energy give to the Australian government in these consultation processes and that proper communication of the outcomes be made back to the women and communities involved.
4. That we express concern of the impact of the Northern Territory intervention legislation and the threat it poses to the human rights of Aboriginal and Torres Strait Islander women.
5. That Aboriginal and Torres Strait Islander women be provided with a direct voice on the international stage, by the reinstatement of a peak body for Aboriginal people in Australia.

Participants in the roundtable expressed that they found it very helpful to have a representative of VWL present, who was able to in effect "donate" time and legal skills to assist the women in expressing some of their ideas in the language of international law.

The roundtable conferences also gave women's organisations the opportunity to network and find out about other projects and initiatives being undertaken around the country. Each Roundtable group supported accession to the Optional Protocol.

In August, the Rudd Government tabled its National Interest Analysis, which proposed that Australia accede to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women. The Optional Protocol allows complaints to be made to the United Nations about the protection of women's rights and gender equality, in the event that all domestic options have been exhausted. VWL along with Australian Women Lawyers wrote a submission in support of accession to the Optional Protocol. This is a significant step forward in protecting women's rights in Australia.

VWL is looking forward to contributing further submissions on CEDAW related issues, and being involved in women's rights discourse at the state and national levels in the future.

## JUSTICE COMMITTEE REPORT

### ASTRID HABAN-BEER & JACINTA MORPHETT, CO-CHAIRS

2008 has been a very busy year for the Justice Committee.

#### Sexual Assault Forum

Following the success of last year's Sexual Assault Forum, the Justice Committee held two more Sexual Assault Forums this year. The first Sexual Assault Forum was held in Gippsland, in partnership with the Gippsland Community Legal Service. The concept of holding a regional Sexual Assault Forum stemmed from a recognition that victims in rural areas can struggle to access services as easily as those in the city, and that often different service providers are not aware of what other organisations do. The Forum was therefore designed to inform those who work in the area of sexual assault and to provide them with an opportunity to ask questions and to network.

The Forum took place in the impressive Sale County Court on 28 March 2008 with four speakers.

Margaret Uebergang, CEO of Gippsland Centre Against Sexual Assault gave an eloquent description of the devastating psychological effects of sexual assault and the counselling services offered by GCASA.

Sergeant Jo Lomas, the police officer in charge of the Bairnsdale Sexual Offences and Child Abuse Unit gave an informative talk about the process of reporting sexual offences to the police and the steps that are taken to support the complainant.

Renee Wilson, a Solicitor, from the Gippsland Community Legal Service, gave a comprehensive overview of the benefits available from the Victims of Crime Assistance Tribunal (VOCAT).

Dr Vivian Waller, Principal of Waller Legal and Co-Chair of the Justice Committee of VWL drew the threads together and discussed the relationship between civil and criminal cases and the comparative strengths and weaknesses of each.

Melanie Hodge, lawyer of Mills Oakley and then Co-Chair of the Justice Committee chaired the session and question time.

The event had a practical focus and was well attended by local social workers, solicitors, police and health workers. Informal discussions continued over afternoon tea. It was a great opportunity provide a comprehensive picture of what can be a rather complex, daunting and fragmented process for those who have endured sexual assault.

The second sexual assault forum was held on 25 September 2008 and the theme was "Women, Sports and the Law." Our impressive line-up of speakers were:

Dr Melanie Heenan from the AFL Respect and Responsibility program, Dr Nikki Wedgwood, Sociologist in the Faculty of Health Sciences at the University of Sydney; Amelia Burgess, sports lawyer at Lander and Rogers; with Convenor - Dr Vivian Waller, Principal of Waller Legal, lawyer in the field of sexual assault cases.

Dr Melanie Heenan discussed her initiatives in educating and training AFL players about matters of sexual assault and respecting women, both in relation to their own conduct, and conduct occurring in the wider community. The Respect and Responsibility Program has found that the influence that AFL players can wield over sections of the community, particularly young men is significant. Melanie's program encourages players to use their public profile to share what they learn with other football clubs and community groups.

Amelia Burgess provided a fascinating insight into the world of Sport Law. Issues of professional contracts, sponsorship, defamation and discrimination are all relevant areas of Sport Law. Amelia shared with us her breadth of knowledge in this area, and her personal experiences as a woman lawyer working in the field and also sitting on sporting disciplinary tribunals.

Dr Wedgwood gave an interesting presentation on the sociology behind sports and male behaviours in relation to sexual assault and perceptions of women. Nikki also took us on a historical journey through sport sociology.

The event was a fabulous success, and a significant amount was raised for the Centre against Sexual Assault (CASA) through generous gold coin donations.

The Justice Committee would like to thank everyone at Allens Arthur Robinson for their generosity in hosting the event. The realisation of such forums is all the more difficult without the support of sponsor firms such as Allens Arthur Robinson.

#### Law Week – Careers of Women in the Law Forum

In May this year, the Justice Committee together with the Victoria Law Foundation organised a "Careers of Women in the Law" Forum. The aim of the event was to provide a forum for successful women in the law to share their stories and experiences of forging a career as women in the traditionally male dominated legal industry. The speakers were Her Honour Judge Felicity Hampel of the County Court of Victoria; Legal Services Commissioner Victoria Marles; and Office of Public Prosecutions Principal Solicitor Vicky Prapas.

The event held at Victoria University was well attended with over 100 people attending. The speakers were entertaining and

informative, sharing inspirational advice, humorous anecdotes and valuable tips with the audience. All of the speakers highlighted the importance of a passion for one's career and a balanced life including time for volunteer commitments, leisure time and family time.

### **Women Migrants Legal Information Project**

The Justice Committee together with the assistance of women from a range of organisations has established the Women Migrants Legal Information Project. The Project aims to provide women migrants with information on the law and their legal rights in Victoria and to produce publications outlining this information as well as general information about the structure of government and the legal system, and where assistance and advice is available. We aim to produce material in several languages. The Project is aiming to obtain funding to conduct research scoping out the extent to which information already exists, and where information is best sourced from. The co-chairs of this committee are Astrid Haban-Beer of the Justice Committee and Sylvia Florescu, a lawyer at Hall and Wilcox Lawyers.

### **Indigenous Students Sponsored Membership**

This year the Justice Committee offered complimentary memberships to indigenous law students for the duration of their legal studies. The Justice Committee recognises the under representation and difficulties faced by indigenous people in the legal profession. By offering VWL memberships, we hope to give indigenous females opportunities to network, participate in committees, attend forums and learn about being a 'woman lawyer' in the company of supportive and professional legal women. Three students took up the offer and we hope more indigenous students and lawyers become VWL members in the years to come.

### **Submissions on Law Reform and Other Matters**

The Justice Committee put forward a number of submissions this year. One submission supported the Australian Women Lawyers (AWL) submission to the Federal Government, which supported Australia becoming a party to the Optional Protocol to the Convention on the Elimination of Discrimination Against Women (CEDAW). Australia has been a party to CEDAW since 1983. Under CEDAW, Australia is obliged to eliminate discrimination between men and women including in relation to work conditions, access to welfare, health care and education. The Optional Protocol gives individuals the right to complain to the United Nations Committee on the Elimination of Discrimination against Women about possible breaches of CEDAW. By encouraging the Government to become a party to

the Option Protocol, the VWL Justice Committee together with AWL clearly champions that discrimination against women in any form is unacceptable. The Justice Committee is committed to promoting and protecting women's rights. The Government has since decided to become a party to the Optional Protocol. In April 2008, VWL was represented at the CEDAW Roundtable Conferences in Canberra by Astrid Haban-Beer and Carmen Currie.

The Justice Committee also supported the Women's Health Victoria submission to the Victorian State Government, which supported the Government's proposed "Model C" for reform to abortion laws in Victoria. Model C recognises abortion is governed by the same body of legal rules that regulate other medical procedures. In addition, the final decision making authority rests with the pregnant woman. Model C reflects current clinical practice insofar as there is currently no gestational limit or different criteria in law for the different stages of pregnancy. At the time of writing, changes to the law of abortion is before Parliament and the Justice Committee hopes that Parliament votes to decriminalise abortions in Victoria. The Justice Committee supports the message that the decriminalisation of abortion would send to the wider community, that is, that the question of termination of pregnancy is not a crime and should be a matter entirely for the pregnant woman to decide.

The Justice Committee also supported the NSW Women's Lawyers submission to the NSW Sex Discrimination Act inquiry. Furthermore, the Justice Committee prepared a submission supporting AWL's submission to the Productivity Submission's Inquiry into Paid Maternity, Paternity and Parental Leave.

The Justice Committee has followed the landmark sexual slavery case of *R v Wei Tang* all the way to the High Court. The case involved 5 Thai women who were brought to Melbourne to work in a brothel owned by Wei Tang. The salient issue was in the analysis of their working conditions and whether those conditions were agreed to. Tang was charged with possessing and using slaves in contravention of the Criminal Code.

The High Court recently handed down a decision in the matter. In the 6-1 decision, the High Court upheld the slavery convictions against Tang. It was revealed throughout the trial and the appeals that the women had been kept in slave like conditions where they had little freedom and little choice but to engage in sexual acts to pay off the 'debt' owed to Tang and the person who brought them into the country. Their travel documents were also taken away. In order to satisfy their debt the women needed to perform somewhere in the order of 900 sexual acts to gain back basic freedoms and pay off their 'debt' of around \$45,000.



The issue for the High Court was to interpret the Criminal Code provisions (Division 270) about the meaning of slavery. Slavery is a condition of ownership where any or all powers attaching to ownership may be exercised. Slavery or the condition of slavery can be shown through the relationship between the accused and the person over whom powers have been exercised. Psychological control was also seen as a factor in assessing restriction over a person's autonomy and freedoms.

The High Court decision is welcomed by the Justice Committee and we hope to engage in initiatives that advocate against trafficking and slavery, not just in relation to women, but to all people.

### Committee Membership

Melanie Hodge and Vivian Waller shared the role of Co-Chairs for about 2 years, and both stepped down as Co-Chairs in the middle of this year. The Committee would like to thank them for all their hard and tireless work, and their contributions in revitalising the activities and profile of the Justice Committee in such a short space of time. Melanie and Viv continue as active Committee members.

Astrid Haban-Beer and Jacinta Morphett now share the position of Co-Chair after more than 2 years on the Committee. 2008 also saw the departure of Caitlin Tierney, who took up a role on the Portia committee and Laura Racky who has taken up the position of Publicity Officer of the VWL Executive. The Committee extend their gratitude to Caitlin and Laura for their contributions. The Committee has welcomed new and enthusiastic members, Eliza Garrett and Taboka Finn.

Jacinta and Astrid extend their appreciation to all current and past Justice Committee members for their hard work and commitment in creating an eventful and successful 2008. Well done!

## MEMBERSHIP COMMITTEE REPORT

### BETH HILTON-THORP, CHAIR

The role of the Membership Committee is to:

- Ensure effective communication with members;
- Broaden and expand the membership base;
- Maintain information about the demographics of VWL membership;
- Obtain feedback from members about what they want from their organization and their level of satisfaction; and
- Pursue initiatives for the benefit of VWL members.

This year it was decided to revamp the application form for membership. Previously we had produced a new form annually, which included information about planned events, details of the current Executive Committee and Sub-committee Chairs, gave an overview of the previous year's activities as well as containing as a tear out sheet the application form. Our annual edition of Portia and WKIT are the vehicles for disseminating information about our activities and achievements and, therefore, it is not necessary to include it in the membership form. We now have a generic form, which makes life a lot simpler for myself as Chair of the Sub-committee and our Administrator.

Analysis of membership demographics and tidying up of the membership register has meant that we have a better understanding of where our membership base is drawn from. VWL continues to be principally an association of practitioners from the CBD though in 2009 we hope to engage more effectively with practitioners from other parts of the city and country.

For the fourth year we hosted a stall at the Victorian Council of Law Students' Societies Careers Fair. Again this was very well attended and many students expressed interest in learning more about VWL activities. We were also pleased that several of our student members made time to come and introduce themselves to us. We consider our participation in the Careers' Fair to provide an excellent opportunity to promote the VWL in the early stages of student life.

Although remaining committed to expanding and broadening membership and ensuring that VWL is meeting its members' needs this year the role of the Committee has been somewhat constrained by lack of resources.. It is expected that in 2009 the Membership Committee will become more active and will concentrate on determining the best ways of meeting current members' needs as well as attracting new members.

Please contact Beth Hilton-Thorp at [jthorp@bigpond.net.au](mailto:jthorp@bigpond.net.au) if you are interested in becoming involved in the Membership Committee.

## NETWORKING COMMITTEE REPORT SUSAN PRYDE AND VERITY SHEPHERDSON, CO-CHAIRS

The Networking Committee organises events which provide an opportunity for VWL members to develop friendships and professional networks, to learn, to exchange ideas, and also importantly, to have fun!

In 2008, the hard working members of the Committee organised a number of very successful events. The Committee also assisted members of the VWL Executive with their organisation of a number of further successful events, making 2008 another action packed year.

As a result of this hard work, VWL presented a diverse range of functions for members and friends. These have ranged from enlightening and motivating seminars by Anne Winckel (on career development) and Ross Clennett (on Leadership), to the ever popular annual Members and Guests' night (this year with added magic by Cath – Woman of Deception), and the successful 'Meet and Greet' function jointly hosted by VWL and the Women Barristers' Association. Fostering relations with our colleagues at the Bar continues to remain one of our priorities.

As always, our Committee is busily organising the AGM and End of Year Celebration and Drinks, and looking forward to celebrating another successful year for VWL.

Many VWL members - and prospective members - have enjoyed the functions organised by our Committee, all which require a level of time commitment, organisation and management by our members to ensure that each event runs smoothly. Thanks are extended to each of the Committee members for their hard work, imagination and generosity:

- Mandy Bede;
- Catherine Boston;
- Hannah Cross;
- Claire Deveson;
- Ruth Hamnett;
- Lydia Kinda;
- Amelia Macknay;
- Anna Robertson;
- Tanya Skvortsova; and
- Jennifer Taylor.

Special thanks also go to Tracey Spiller. We have relied on Tracey's wonderful organisation and fabulous assistance throughout the year to ensure our networking events are a great success.

## SPONSORSHIP REPORT ALEX NESKES, SPONSORSHIP OFFICER

The work of Victorian Womens Lawyers Association would not be possible without the ongoing support of its principal sponsor: the Law Institute of Victoria and its major sponsors: Allens Arthur Robinson, Blake Dawson, Clayton Utz, Corrs Chambers Westgarth, DLA Phillips Fox, Maddocks, Mallesons Stephen Jaques, Middletons and Minter Ellison.

In 2008, VWL profiled key female lawyers from each of its sponsor firms in its monthly e-newsletter, Women Keeping in Touch. Early on in the year, our Convenor Christine Melis and Sponsorship Officer, Alex Neskes met with the managing partner or key VWL relationship partner of each sponsor firm to discuss the year's agenda. Our Executive members attended several sponsor firms to talk about VWL initiatives and, as always, each of our sponsor firms hosted a VWL event on their premises.

Special thanks also go to Freehills for the support provided to VWL for the duration of the tax case.

## AUSTRALIAN WOMEN LAWYERS PRESIDENT'S REPORT FIONA MCLEOD SC

### PRESIDENT'S REPORT TO 2008 AGM

Over the last twelve months, from the time of our AGM in September, 2007 coinciding with AWL's 10 year anniversary dinner, I have had the opportunity on behalf of AWL to be involved in a number of national and local activities and to contribute to debates on issues of concern to women lawyers and lawyers generally.

This has been an extraordinary year for AWL in terms of our profile. We have continued to build good relations with commonwealth agencies, in particular the Office of Women, HREOC and the new Commonwealth Attorney General and his Department on a formal and informal level resulting in many consultations on all manner of issues ranging from law reform, human rights, and judicial and tribunal appointments. I have also contributed to many newspaper articles about the status of women in the profession.

We have continued to address issues of importance to women, to the law and to women lawyers. I have been most privileged to speak on behalf of AWL to women lawyers across Australia, to the profession, the judiciary, to the media and to a number of Attorneys General and their staff. We have also been able to assist our local constituent bodies with relations with their Attorneys General from a unique position – being able to speak without fear or favour of the need for them to support local constituent bodies and our agenda.

### The Board

I was lucky to be supported by a wonderful Board. The friendship and support of my fellow Board members has been invaluable and has inspired me continuously. Our face to face meetings are invigorating and fun. Their willingness to pitch in, whether it be with drafting submissions, approaches to the profession or managing the logistics of AWL functions has been extraordinary. Each of us contributes her time on a voluntary basis and I know each is also busy with life, practice and local issues to attend to.

I acknowledge my Board, all wonderful and inspiring women.

Vice President	Georgia McMaster (NT)
Secretary	Leonie Kennedy (ACT)
Treasurer	Elizabeth Heenan (WA), then Lee-May Saw (NSW)
Themis Editor	Brooke Dellavedova (Vic VWL), also our Conference Co-ordinator

Board members	Mary Anne Bartole (Tas)
	Olivia Perkiss (Qld)
	Kerry Clarke (SA)
	Rebecca Lee (WA)

Brooke and I are retiring at this AGM as Board members. I welcome our replacements Kim Knights (Vic WBA) and Christine Melis (VWL). In accordance with AWL convention, Christine will be appointed to the Board and Kim will take up the observer position for the first year, with WBA and VWL rotating the formal appointment each year unless its appointee takes up an executive position. I am sure each will make a significant contribution to AWL and continue the work they have each already undertaken on a State level.

I also acknowledge the support of Past Presidents, especially Janean Richards, Caroline Kirton and Noor Blumer. Noor is now the Chair of the Law Council Equalising Opportunity in the Law Committee. AWL continues to support the work of this committee and will continue the work of the joint National Gender Appearance Survey and Model Briefing Policy Projects with Noor's committee.

### Key Issues for 2007-2008

The issue of our participation in the profession remains a key issue for the Board particularly in private practice and at the bars. Women have been passing through law schools in equal numbers or marginally greater numbers than men for at least 20 years, probably more. By the time we reach partner, director or queens and senior counsel our numbers dwindle to between 10 and 20%. While we celebrate the appointment of women in numbers to the judiciary and other senior positions outside of private practice, the drift away from the law reflects a lack of genuine choices for women lawyers. Financial impediments and lack of flexibility in working arrangements are key factors in the decision to move away from the practice of law permanently.

AWL must continue to work with firms, the bars and the universities to understand the reasons for women leaving and where appropriate address those reasons. In June I wrote an article appearing in *The Australian*, noting that while a few firms were leading the way in terms of the number of women equity partners, the rest are languishing behind. Given that the business case for the retention and promotion of women has been well established for a number of years, the lack of progress is discouraging. I called upon firms to commit themselves to reaching a benchmark of 30% women equity partners within three years. Many firms are capable of reaching this target with a serious commitment to supporting equal opportunity policies and flexible working arrangements. Others will need

radical cultural change.

I have also very much enjoyed travelling to different States and Territories to share the experiences of local women lawyers and attend women lawyers achievement awards dinners.

We have produced two editions of the AWL newsletter Themis thanks to Brooke and relocated our website, now found at [www.australianwomenlawyers.com.au](http://www.australianwomenlawyers.com.au) with a number of updated entries thanks to Olivia.

## Patron

This year marked the retirement of our founding patron The Hon. Mary Gaudron QC. Mary has been a stalwart supporter of the organisation and of individual women lawyers for many many years and we will miss her participation greatly. We are most fortunate that Chief Justice, The Hon. Justice Diana Bryant has agreed to take on the role of patron and has launched herself with great enthusiasm into the role. I look forward to the formal hand over party early next year.

## Conference

This year we have conducted our second annual conference, Creating Justice in Melbourne over three days. Many eminent speakers joined us for the conference including Chief Justices Diana Bryant, Marilyn Warren and Sian Elias from New Zealand. The conference produced a conference communique for the first time setting new goals for our national and international agenda for the future. Working on this document was exciting. We circulated the document to constituent bodies for input prior to the conference and then drew upon the themes of our conference papers. There was lively discussion with individual members and conference delegates over a number of weeks resulting in this document unanimously endorsed by the conference and later adopted as Board policy. The conference was profitable and well regarded with an overwhelmingly positive response from delegates.

Our next conference will be in Brisbane in 2010. I look forward to participating as a delegate and wish the organising committee all the best in their endeavours!

## Submissions and Public Interest

Over the course of the year we have contributed submissions to a number of government inquiries and fora including:

- The review and amendment of the Commonwealth Legal Services Directions in respect of equal opportunity briefing and the move to mandatory reporting
- Maternity Leave
- Accession to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women

- The implementation of a national action plan as contemplated by UN Security Council Resolution 1325
- Consideration of the Optional Protocol on the Convention on Disabilities
- Consideration of the Convention on Torture
- Consideration of the Mandatory Detention Policy
- Consideration of the "NT Intervention" Legislation
- The Draft report on the Convention on the Rights of the Child
- Defence White Paper
- Senate Committee review of the Sex Discrimination Act and promotion of a commonwealth Equality Act
- House of Representatives Pay Equity Inquiry
- The Cth AGs Human Rights Forum
- The Cth AGs NGO roundtable on Human Trafficking
- The Australian Institute of Criminology Forum on People Trafficking
- Family Law Bill amendments
- Victorian review of Equal Opportunity Act and establishment of Relationships Register
- Victorian Government Barristers Briefing Report

We have also participated in the work on the Law Council Equalising Opportunities in the Law Committee, particularly the model briefing policy working group and national Gender Appearance Survey working group. This is a major project that will need the support of the superior courts and the staff of those Courts. We look forward to contributing to this important project.

## Appointments

The Attorney General now regularly consults with AWL as a matter of policy in relation to federal appointments. We have nominated women for appointment to the Federal Magistrates Court, the Federal Court, the High Court, for the position of the President of HREOC and the UN Committee on Disabilities. I have written offering congratulations to all new women District, County, Supreme and Federal Court appointees and to the new High Court Chief Justice. I have also written to a number of magistrates, women members of parliament and new silks.

AWL supports broad consultation by the commonwealth and state attorneys general in relation to judicial appointments and we appreciate our inclusion in the process.

### Other Representation

I had the opportunity to attend a number of significant events as President this year including the Prime Minister's 2020 Summit, the welcome of the new Chief Justice of the High Court, Justice French and the welcome to new silks in NSW.



I also participated in the Australian Bar Association advocacy training program this year and met with women lawyers groups in Bangladesh.

### The Future

At the time of the AGM, AWL unfinished projects include –

- Our request to the Law Council for executive and other assistance
- The 2010 Conference in Brisbane
- Our submissions to the Pay Equity Inquiry
- Our submission to the Defence White paper
- The next round of submissions on Parental Leave and on the OP to CEDAW
- Our proposal to create a post graduate scholarship for women in the name of Mary Gaudron QC
- Our joint management of the Law Council National Gender Appearance Survey
- Participation in the SCAGs harmonisation project
- The resolution of the tax position of AWL following VWL v DCT
- The redesign of our website providing easy access to historical and current projects and news of upcoming events
- Australia Day/ Queens Birthday awards
- Australia/Japan Foundation grants and contact with JWL

And of course there is a party for our retiring patron next year!

I wish AWL every success in her future endeavours. It has been an extraordinary year and I am honoured to have had the opportunity to contribute during my term on the Board

**Fiona McLeod**

September, 2008



'Vida Goldstein banner' 2008 by Artist Fern Smith



Moving landscape 2008 - 8.5meters x 90cms oil on canvas  
by Artist Fern Smith



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